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No. ———

IN THE

Supreme Court of the United States

October Term, 1983

The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; the Minnesota Police and Peace Officers Association; the Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; and Minnesota Police Pension Council, *Appellants,*

v.

Barbara L. Sundquist, Commissioner of Employee Relations; Allen Rudell, Commissioner of Finance; and the State of Minnesota, *Appellees,*

and

AFSCME Councils 6, 14, 65 and 96, AFL-CIO; Minnesota Education Association; Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320; St. Paul Police and Firefighters Relief Association; and Minnesota Association of Professional Employees, *Appellees,*

and

International Union of Operating Engineers, Local 49, *Appellees/Amicus Curiae.*

On Appeal From the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

(Counsel of Record printed on inside front cover)

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17 February 1984

QUESTIONS PRESENTED

1. Was it error for the Minnesota Supreme Court to uphold the constitutionality, under the Contract Clause (U.S. Const., Art. I, §10, cl. 1), of those provisions of *1982 Laws of Minn.*, Third Special Session, Chapter 1, Article II, Section 2, Subdivision 1(v) which require most (but not all) members of Minnesota state and local government public employee pension plans to make a special "one-time-only" additional contribution to their respective public pension plans, where the purpose of such additional contribution was to replenish the pension funds by the exact amount simultaneously extracted by the State of Minnesota from such pension funds in order to increase state revenue, in partial alleviation of a significant state budget deficit?

2. Was it error for the Minnesota Supreme Court to uphold the constitutionality, under the Due Process Clause (U.S. Const., Amend. XIV), of the above-mentioned state law provision, under the foregoing circumstances?

3. Was it error for the Minnesota Supreme Court to uphold the constitutionality, under the Equal Protection Clause (U.S. Const., Amend. XIV), of the above-mentioned Minnesota state law provision, under the foregoing circumstances?

PARTIES TO THIS PROCEEDING

The caption of this case contains the names of all parties to the proceedings below.

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IN THE

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October Term, 1983

No. ———

The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; the Minnesota Police and Peace Officers Association; the Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; and Minnesota Police Pension Council, *Appellants,*

v.

Barbara L. Sundquist, Commissioner of Employee Relations; Allen Rudell, Commissioner of Finance; and the State of Minnesota, *Appellees,*

and

AFSCME Councils 6, 14, 65 and 96, AFL-CIO; Minnesota Education Association; Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320; St. Paul Police and Firefighters Relief Association; and Minnesota Association of Professional Employees, *Appellees.*

and

International Union of Operating Engineers, Local 49, *Appellees/Amicus Curiae.*

On Appeal From the Supreme Court of Minnesota

JURISDICTIONAL STATEMENT

The Minneapolis Police Relief Association and the rest of the above-listed Appellants respectfully appeal from the Judgment of the Supreme Court of Minnesota in *AFSCME Councils 6, 14, 65 and 96 v. Sundquist*, 338 N.W.2d 560 (Minn. 1983).

OPINIONS BELOW

The opinion of the Minnesota Supreme Court entered September 16, 1983, order denying the petition for rehearing entered November 22, 1983, and the opinion of the three-judge District Court panel entered January 24, 1983, are set out in the Appendix hereto. The decision of the Minnesota Supreme Court is reported as *AFSCME Councils 6, 14, 65 and 96, AFL-CIO v. Sundquist*, 338 N.W.2d 560 (Minn. 1983).

JURISDICTION

This is an appeal from a decision of the Minnesota Supreme Court which sustained the constitutionality of *1982 Laws of Minn.*, Third Special Session, Chapter 1, Article II, Section 2, Subdivision 1(v), under the Contract Clause (Art. I, §10, cl. 1) and the Due Process and Equal Protection Clauses (Amend. XIV) of the United States Constitution. All of these federal constitutional questions were timely raised by Appellants at each stage of the litigation. Appelants filed their notice of appeal on February 13, 1984.

The jurisdiction of the U.S. Supreme Court to review this decision of the Minnesota Supreme Court on appeal is conferred by 28 U.S.C. Section 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., Art. I, §10, cl. 1, provides in relevant part as follows:

> "No State shall . . . pass any . . . law impairing the Obligation of Contracts. . . ."

The Fourteenth Amendment to the Constitution of the United States provides in Section 1 as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, wihout due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

1982 Laws of Minn., Third Special Session, Chapter 1, is set out in full in the Appendix hereto.

STATEMENT OF THE CASE

The first several years of the present decade was a time of relative economic distress for many state and local governments across the country, including the State of Minnesota. On several occasions in the years 1980, 1981, and 1982, Minnesota's legislature enacted laws intended to alleviate chronic revenue shortfalls which the state experienced during that period. Alleviation of state government's budget problems in these laws was obtained primarily through various tax hikes to increase revenue, reduction of government services to decrease state spending, and the shifting of current governmental obligations to defer reflection of state spending until subsequent budgetary accounting periods.

In late October or early November, 1982, responsible state government officials were again advised that further government action was necessary if the state was to meet its existing obligations and avoid a net deficit for the state's July, 1981, through June, 1983, budget period. After much informal discussion of possible solutions between former Governor Albert H. Quie, members of his administration, and a number of state legislative leaders, the Governor called the Third Special Session of the 72nd Minnesota Legislature in early December, 1982, to obtain a legislative solution to the budget problem. The legislature met for three days, at the conclusion of which a single piece of legislation was enacted, denominated *1982 Laws of Minn.*, Third Special Session, Chapter 1 (the "Act"). This Act, like prior budget-balancing legislation, included provisions which increased state taxes, reduced state government spending, and shifted current obligations into subsequent accounting periods.

The objectionable aspect of this Act is its unprecedented inclusion of complementary provisions which both increase the pension contribution of almost all state and local government employees and, in turn, require these employees' public pension funds to pay an equivalent amount to the State of Minnesota's Treasury. These provisions are set forth in Article II, Section 2, Subdivision 1(v) of the Act. The obvious effect of these provisions is to increase the state's revenue and alleviate a portion of the state's budget woes through an exaction payable solely by members of public employee pension organizations. The employee contributions were to be paid through withholding from each of their 1983 paychecks, while the payments by the pension funds were to be made, or at least credited, to the state treasury during January through June, 1983.

Because the challenged provisions were to be implemented almost immediately after enactment, this litigation was commenced on the day the Act was passed through the relatively unusual procedure of a Petition for Quo Warranto addressed directly to the Minnesota Supreme Court. (All of the federal constitutional issues addressed in the Minnesota Supreme Court's final decision here (and which are raised on this appeal) were directly raised by these Appellants and the other complaining parties hereto from the initial stages and throughout the progress of this case.) Ten days later, on December 20, 1982, the Minnesota Supreme Court denied the Petition for Quo Warranto and assigned the case to a specially-appointed panel of three retired District Court judges for expedited hearing and determination.

On December 30, 1982, the three-judge panel denied the complaining parties' motion for a temporary injunction *pendente lite*, but set the matter for trial commencing January 6, 1983. On January 24, 1983, the three-judge panel issued its Order dismissing the complaining parties' action, ruling that the challenged provisions of the Act did not violate the Contract, Equal Protection, or Due Process clauses of the United States Constitution.

On review, the Minnesota Supreme Court, by a five to four majority, affirmed the three-judge District Court panel in an opinion issued September 16, 1983. A motion for rehearing was denied on November 22, 1983.

The Minnesota Supreme Court's majority opinion held that the Minnesota Act in question did not unconstitutionally impair the obligation of contracts between public employee pension organization members and their state and local government employers because public employees had no contractual right to "fixed levels of employee pension contributions." Thus, it found no "contract" to impair, and did not proceed to determine whether the impairment was so insubstantial or necessary and reasonable as to be permissible under the doctrine recently reaffirmed by this Court in *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978); *United States Trust Co. v. New Jersey,* 431 U.S. 1 (1977); and *Energy Reserves Group, Inc. v. The Kansas Power and Light Company,* — U.S. —, 103 S.Ct. 697 (1983). For this same reason, it held that there was no constitutionally protected "property" interest present, and therefore rejected the claim that the Act violated the affected classes' Fourteenth Amendment "Due Process" rights.

The Minnesota Supreme Court majority also held that the Act did not deny "equal protection" of the laws to the affected class of public pension organization members. The complaining parties had asserted that the Fourteenth Amendment's "Equal Protection" clause was violated by the Act in two ways: first, that there was no "rational basis" for imposing a special exaction upon almost (but not quite) all of the state's public pension organization members alone; and, secondly, that the special exaction imposed under the circumstances of the Act constituted, in actual effect, a tax which was discriminatorily assessed.

The Minnesota Supreme Court majority, relying on this Court's formulation of the "rational basis" test for "equal protection" purposes recently set forth in ***Western & Southern Life Insurance Co. v. State Board of Equalization,*** 451

U.S. 648 (1981), rejected Appellants' first argument on the ground that it was legitimate for the state to impose an "additional employee pension contribution" because the revenue so raised was needed to replenish the equivalent amounts diverted from the pension funds to the state treasury under corresponding provisions of the same Act. The Court majority rejected the complaining parties' discriminatory tax argument on the basis that "the increased employee pension contribution is not a tax" because its characteristics "differ significantly from those of a tax," including the fact that such contributions "are credited to the employee's individual retirement account," they "allow the employee to receive pension benefits upon retirement," and they therefore "inure to the benefit of the employee upon his retirement, and [are] not collected for the benefit of the public generally." The Court concluded that "[t]hese characteristics distinguish pension contributions from taxes," while refusing to acknowledge the obvious fact that the "separate" employee pension contribution and pension fund remittance provisions of the Act are in fact inseparable means to accomplish a single state objective: an increase in the State of Minnesota's revenue for the purpose of alleviating the state's budgetary difficulties.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

I.

The Minnesota Act requires almost every member of a Minnesota state or local government employee pension organization to pay an amount equal to two percent of each member's gross 1983 salary to their public pension fund, over and above the preexisting employee pension contribution rate established by state law. Corresponding provisions of the same Act require the public pension funds, in turn, to pay an equivalent amount to the State of Minnesota. The clear purpose of this scheme, as recited in the Act's preamble, is to increase the revenue available to state government in order to alleviate its budgetary difficulties. The exaction imposed upon public employees under these circumstances appears to be completely unprecedented.

As pointed out in the Minnesota Supreme Court's principal dissenting opinion, that Court has previously recognized that the terms and conditions of a public pension plan give rise to contractual rights for the benefit of the plan's contributing members. See *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W.2d 740 (Minn. 1983); and *Sylvestre v. State*, 298 Minn. 142, 214 N.W.2d 658 (1973), (recognizing that a pension plan constitutes a form of deferred compensation). The vast majority of courts faced with the issue within the past several decades have recognized the same principle. See, e.g., *Opinion of the Justices*, 364 Mass. 847, 303 N.E.2d 320 (1973); *Pineman v. Oechslin*, 494 F.Supp. 525 (D. Conn. 1980); *Marvel v. Dannemann*, 490 F.Supp. 170 (D. Del. 1980); and *Allen v. City of Long Beach*, 45 Cal.2d 128, 287 P.2d 765 (1955).

In previous "contract clause" cases, this Court has noted some of the problems inherent in deferral to the state legislature's assessment of the reasonableness and necessity of its legislation when the state's self-interest is at stake. Indeed, in *United States Trust Co. v. New Jersey*, 431 U.S., at 26, this Court noted that "[a] governmental entity can always find a use for extra money, especially when taxes do not have to be raised."

Here, the legislature, seeking a politically expedient alternative to further tax increases, constructed a scheme whereby revenue could be raised to help alleviate the state's budget problems without raising taxes generally, while at the same time making it appear that most of the state's public pension funds were making the payments. In the meantime, those pension funds' contributing members were being required to pay exactly that same amount to their pension funds for the ostensibly unrelated purpose of replenishing the pension funds.

The obvious interrelationship of the Act's "member contribution" and "pension fund remittance" provisions was intentionally overlooked by both the trial court and the Minnesota Supreme Court's majoriy on the basis of inappropriate legal technicalities. Thus, the trial court repeatedly deferred to the legislative judgment "as exercised in an emergency situation" in order to sidestep the real federal constitutional issues presented by the case. On review, the Minnesota Supreme Court in turn deferred both to the legislative judgment and to the findings of the trial court, thereby also avoiding the true federal issues.

Through both an unwarranted deferral to the legislative judgment and, even more importantly, an unjustifiably narrow reading of the issues presented, the Minnesota Supreme Court's majority was able to find that no contractual right was impaired by the Minnesota Act. Appellants consistently acknowledged at every stage of these proceedings that a public pension organization member has no right to a "*fixed* level of employee pension contributions" (the narrow issue posited by the Court majority), since there clearly could be genuinely *valid* reasons for increasing an employee's pension contribution level, such as a commensurate improvement in the pension plan's benefit structure or to remedy an impending fiscal crisis within the pension fund itself.

The true federal "Contract Clause" issue, which the Minnesota Supreme Court majority never addressed, is whether public employees have a "contractual" right,, for federal Contract Clause purposes, to existing levels of pension contribution in the absence (as here) of any truly legitimate reason for increasing such levels. Since at least as early as its decision in *Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L.Ed. 629 (1819), this Court has properly reserved unto itself the power to determine whether or not a constitutionally-protectible "contract" exists for purposes of the "Contract Clause." See also, *United States Trust Co. v. New Jersey*, 431 U.S., at 17, f.n. 14. An examination of the actual issues of this case clearly establishes the Minnesota Act's impairment of a substantial contractual obligation owed by the state and local governmental subdivisions to the affected public pension organization members represented by these Appellants.

Likewise, under the "property" analysis undertaken in *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), it is apparent that the affected public employees have a protectible property interest in the additional employee pension contribution amounts which the Act requires them to pay. Thus, the Minnesota Act should be reexamined for the purpose of determining whether it denies this "property" interest without due process of law.

II.

Perhaps the most compelling reason justifying reversal of the Minnesota Supreme Court's decision in this case, however, is the circular and unfounded reasoning relied upon by the majority in its "Equal Protection" analysis. The majority first implied that the legislature should be excused for any constitutional inadequacies of the Minnesota Act because it was acting "under heavy time pressures" in its sixth attempt in less than three years' time to resolve the state's budgetary difficulties. The majority also emphasized that the Act's scheme of exacting payments from the public pension funds and most of those funds' members was only "temporary," thereby implying, in part, that it was a one-time-only scheme that was unlikely ever to be repeated, and presumably should therefore not be too closely scrutinized under the circumstances of the state's budget "emergency". While these facts may conceivably bear on other issues (such as whether the contract impairment created by the Act was justifiable as a reasonable and necessary exercise of the police power), it may fairly be assumed that they have no proper place in determining whether the disparate treatment accorded the affected class of public pension organization members was rationally related to a legitimate state purpose.

As previously noted, the Minnesota Supreme Court majority determined that the additional pension fund contributions required of most of the state's public employees was needed to replenish the amounts which complimentary provisions of the same Act diverted from the pension funds to the state treasury. It was this "purpose" of the Act which the Court majority found to be "legitimate." It then concluded that the inclusion of most, but not all, public pension organization members within the affected class was "rational" because the omitted class belonged to a pension fund which had also been omitted from the class of pension funds required to remit equivalent amounts to the state treasury, and because, under the state constitution, imposing the remittance requirement on the omitted pension plan "may" have constituted an "improper invasion of the management perogatives" of the University of Minnesota's Board of Regents.

The Minnesota Supreme Court majority also rejected the view that the additional contribution exactions in effect constitute a discriminatory tax, holding that the fact that "the pension contribution inures to the benefit of the employee upon his retirement, and is not collected for the benefit of the public generally" distinguishes these exactions from a "tax."

The first major error in both the trial court and Minnesota Supreme Court majorities' "Equal Protection" analysis is their failure to acknowledge the plain reality of how the Act's complimentary provisions work. Prior to enactment of the Minnesota Act, there was no need to bolster or replenish the state's public pension funds. These funds, as the trial record clearly shows, were in at least adequate, and in some cases extremely robust, financial shape. But for this Act, and its diversion of money from the pension funds to the state treasury, there would have been absolutely no justification whatsoever for increasing the levels of the members' contributions. Had the Minnesota legislature then simply increased member contribution levels, without enacting other provisions affecting the pension funds, it would certainly have constituted an unconstitutional impairment of the public employers' contract obligations regarding the pension funds.

The Minnesota Act purports to first create an unsound fiscal condition in pension funds by diverting money from the funds to the State Treasury. It then relies on this self-created condition as a legitimizing purpose for its increase in the contribution levels of the pension funds' members. Thus, the Act does indirectly what it clearly could not have done directly. The issue which should have been, and should yet be, addressed is whether such an artifice may fairly be relied upon in determining whether the legislature had a "legitimate purpose" in imposing an exaction upon one small class of public employees, when the actual result and obvious intent of such a scheme is to provide a source of revenue to the state and thereby benefit all of the state's taxpayer's equally.

The second major problem with both Minnesota courts' "Equal Protection" analysis is closely aligned to the first problem just discussed. If the separation of the complimentary "member contribution" and "pension fund remittance" provisions was merely a convenient artifice for accomplishing the intended result of acquiring revenue for the state treasury, isn't it disingenuous to claim that the amount exacted only from public pension fund members is not a discriminatory "tax" on the basis that, unlike a tax, the amounts exacted "inures to the benefit of the employee upon his retirement, and is not collected for the benefit of the public generally"? The amounts exacted from these employees under the Act makes them no better off at their retirement than they would otherwise have been if the Act had never been enacted, since its only effect was to replace money diverted from the pension funds to the state treasury under complimentary provisions of the same Act. It must be plain that, under these circumstances, reality is served only by telescoping the complimentary provisions, at which point the true nature of the Act's exaction from public pension organization members is clearly revealed to effectually constitute a tax imposed only upon that small class of citizens for the benefit of the State Treasury, and thereby for the benefit of all Minnesota taxpayers.

The Minnesota Supreme Court dissenting opinions were in clear agreement that the "additional employee pension contribution" extracted by this Act is a "tax" for purposes of constitutional analysis, and, as such, that its imposition in the manner here involved constituted an unconstitutional tax as well. As the principal dissenting opinion noted, "[i]f a bird looks like a duck, quacks like a duck, and walks like a duck, it is most likely a duck. Likewise, if an act looks like a tax, raises revenue like a tax, and is mandatory like a tax, it is a tax."

CONCLUSION

The decision below upholding the constitutionality of the Minnesota Act's exaction of an "additional employee pension contribution" under the circumstances here present should either be summarily reversed and remanded to the Minnesota Supreme Court for further consideration of those aspects of Appellants' federal constitutional claims which have not yet been addressed, or, in the alternative, this appeal should be accorded plenary review.

Respectfully submitted,

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Dated: February 17, 1984.

APPENDIX

AFSCME COUNCILS 6, 14, 65 AND 96, AFL-CIO, Plaintiffs-Appellants,

v.

Barbara L. SUNDQUIST, Commissioner of Employee Relations; Allen Rudell, Commissioner of Finance; and the State of Minnesota, Defendants-Respondents,

and

The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; the Minnesota Police and Peace Officers Association; The Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; Minnesota Pension Council; Minnesota Education Association, Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320; St. Paul Police and Firefighters Relief Associations, Minnesota Association of Professional Employees, Intervenors-Appellants,

and

International Union of Operating Engineers, Local 49, Amicus Curiae.

Nos. C1-83-152, C8-83-164, C1-83-166, C3-83-167 and C5-83-168.

Supreme Court of Minnesota
Sept. 16, 1983.
Rehearing Denied Nov. 22, 1983.

Parties representing public employees petitioned the Supreme Court for a writ of quo warranto in an effort to prevent enforcement of legislation requiring various state, county and municipal employees to temporarily pay an additional 2% of their salaries into their respective pension funds. The Supreme Court denied the petition and remanded to a special three-judge district court panel for an expedited hearing. The District Court, Ramsey County, Archie L. Gingold, Gordon L. McRae and Bruce C. Stone, JJ., dismissed the complaint, and plaintiffs appealed. The Supreme Court, Amdahl, C.J., held that: (1) the legislature's promise to supply pension benefits to public employees did not constitute an implied-in-fact contract to maintain employee pension contributions at a fixed level; (2) the legislative classification at issue was rationally related to achievement of a legitimate governmental purpose, and thus did not deny equal protection; (3) the increased employee pension contribution was not a "tax" and thus, did not violate the uniformity of taxation clause of the State Constitution; (4) the legislation did not deprive public employees of any property right in violation of due process of law; (5) the legislation was not a taking of private property for public use; and (6) the legislation did not constitute an unfair labor practice within the meaning of the Public Employment Labor Relations Act.

Affirmed.

Yetka, J., dissented with opinion in which Scott and Wahl, JJ., joined.

Kelley, J., dissented with opinion.

1. Implied and Constructive Contracts 1

Where the evidence does not prove the existence of an express agreement, a contract implied in fact may be established by circumstantial evidence showing a mutual intention to contract.

2. Appeal and Error 1008.1(10)

Whether a contract is to be implied in fact, and the existence of the terms of such a contract, are questions of fact to be determined by the trier of fact, and the trier's findings in this regard will not be set aside by the Supreme Court unless they are found to be clearly erroneous. 48 M.S.A., Rules Civ.Proc., Rule 52.01.

3. Officers and Public Employees 94

The legislature's promise to supply pension benefits to public employees did not constitute an implied-in-fact contract to maintain employee pension contributions at a fixed level during their employment. M.S.A. §§ 353.38, 645.27.

4. Constitutional Law 70.1(12)

The Supreme Court must extend considerable deference to the legislature's exercise of its broad discretion in determining conditions, classifications and membership in public pension plans. M.S.A. § 353.38.

5. Estoppel 85

"Promissory estoppel" is applicable when a promise has been made, which the promissor expected or should have reasonably expected to induce action of a definite and substantial character by the promisee, which in fact induced such action, and in circumstances requiring the enforcement of the promise to void injustice.

See publication Words and Phrases for other judicial

Constructions and definitions.

6. Appeal and Error 1008.1(8)

In action by parties representing public employees challenging validity of legislation requiring various state, county and municipal employees to temporarily pay an additional 2% of their salaries into their respective pension funds, trial court's findings that the state made no promise regarding guaranteed levels of employee contributions to pension funds, and that, even if such a promise had been made, plaintiffs did not establish that they reasonably and detrimentally relied upon such a promise, were not clearly erroneous, in light of evidence that employee contribution levels to the pension funds had previously fluctuated over time. Laws 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.

7. Constitutional Law 18 Statutes 77(1)

The prohibition against arbitrary legislative action embodied in the equal protection, state uniformity, and state special legislation clauses of the Minnesota Constitution is coextensive with that afforded by the federal equal protection clause. M.S.A. Const. Art. 1, § 2; Art 10, § 1; Art. 12, § 1; U.S.C.A. Const.Amend. 14, § 1.

8. Constitutional Law 213.1(2)

Under the equal protection clause, legislative classifications must make distinctions which are rationally related to legitimate legislative goals or interests. M.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend 14, § 1.

9. Constitutional Law 213.1(2)

In determining whether a challenged classification is rationally related to a treatment of a legitimate state purpose, two questions must be answered: (1) does the challenged legislation have a legitimate purpose, and (2) was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose? U.S.C.A. Const.Amend. 14.

10. Constitutional Law 48(1), 70.3(4)

Statutes carry a presumption of constitutionality, and it is not the role of the judiciary, in applying the rational basis standard, to question either the factual accuracy or political wisdom of the reasoning and judgments underlying the legislative enactment. M.S.A. Const. Art. 1, § 2; U.S. C.A. Const.Amend. 14, § 1.

11. Constitutional Law 70.1(4)

In challenges to statutes under the equal protection clause, the Supreme Court accepts legislative expressions regarding the purposes of the legislation as the actual purposes unless the Supreme Court's review of the legislative history and the statutory scheme convinces the Supreme Court that they could not have been a goal of the legislation. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 14, § 1.

12. Officers and Public Employees 94

In action by parties representing public employees challenging validity of legislation requiring various state, county and municipal employees to temporarily pay an additional 2% of their salaries into their respective pension funds, evidence of the legislative history and statutory scheme was sufficient to support findings that the purposes stated in the act's preamble were its actual purposes, and that such purposes were legitimate. Laws 1982, 3rd Spec.-Sess., c. 1, Art. 1 et seq.; M.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 14, § 1.

13. Officers and Public Employees 94

Fact that legislation requiring various state, county and municipal employees to temporarily pay an additional 2% of their salaries into their respective pension funds requires that only public, and not nonpublic, employees temporarily contribute the additional 2% is rationally related to the legitimate state interest in preventing undue economic displacement by maintaining the actuarial integrity of the public retirement system. Law 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.; M.S.A. Const. Art. 1, § 2; U.S.C.A. Const.-Amend. 14, § 1.

14. Constitutional Law 238.5

Legislature's decision to exempt faculty of the University of Minnesota from requirements that various state, county and municipal employees temporarily pay an additional 2% of their salaries into their respective pension funds was rationally related to purpose of the challenged provision to maintain the actuarial integrity of public pension funds affected by budget cuts, in that the University faculty had a separate pension fund and employer contributions to this fund were not affected by the budget cuts. Laws 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.; M.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 14, § 1.

15. Constitutional Law 238.5

The rationality of an increase in contribution levels to participants in any one public employee pension plan must be assessed on its merits by reference to the purpose for which the increase was imposed. M.S.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 14, § 1.

16. Taxation 40(1)

The requisite initial determination in any analysis under the uniformity of taxation clause is that the challenged provision is, indeed, a tax. M.S.A. Const. Art. 10, § 1.

17. Taxation 40(2)

Requirement that various state, county and municipal employees temporarily pay an additional 2% of their salaries into their respective pension funds is not a tax, and thus, such requirement is not in violation of the uniformity of taxation clause. Laws 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.; M.S.A. Const. Art. 10, § 1.

18. Constitutional Law 254.1, 277(1)

The threshold determined in a due process claim is whether the interest allegedly interfered with rises to the level of a constitutionally protected "liberty" or "property" interest. M.S.A. Const. Art. 1, § 7; U.S.C.A. Const.Amend. 14.

19. Constitutional Law 277(1)

Contractual rights are a form of "property" within the meaning of the due process clause. M.S.A. Const. Art. 1, § 7; U.S.C.A. Const.Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

20. Constitutional Law 277(2)

Requirement that various state, county and municipal employees temporarily pay an additional 2% of their salaries into their respective pension funds did not interfere with any property interest in the individual salaries of the employees, in that the net effect of such requirement upon the salaries of public employees was, in most cases, beneficial, due to "pick-up" provision which would result in substantial federal income tax savings. M.S.A. Const. Art. 1, § 7; U.S.C.A. Const.Amand. 14.

21. Eminent Domain 2

The constitutional prohibition against governmental expropriation of private property applies only when it is demonstrated that the property has been taken for public purposes. M.S.A. Const. Art. 1, § 13; U.S.C.A. Const.Amend. 5.

22. Eminent Domain 2(1.1)

Requirement that various state, county and municipal employees temporarily pay an additional 2% of their salaries into their respective pension funds was enacted for purpose of maintaining actuarial integrity of the public pension funds, which action benefited the contributors themselves, and was thus not a "public use" within the meaning of the constitutional proscription against governmental expropriation of private property for public purposes. M.S.A. Const. Art. 1, § 13; U.S.C.A. Const.Amend. 5; Laws 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

23. Labor Relations 249

The express exclusion, in the Public Employment Labor Relations Act of 1971, of pension considerations from the definition of terms and conditions of employment, was established to take all pension issues completely out of the scope of permissible bargaining, and thus, it is illegal to agree to provisions, express or implied, which purport to restrict the legislature's freedom to act with respect to such issues. M.S.A. §§ 179.61 et seq., 179.63, subd. 18, 179.66, subd. 2.

24. Labor Relations 178

Consequences upon net salaries of public employees which resulted from exercise of legislative discretion over employee pension contributions were permissible as a necessary incident of the scope of the statutory exclusion of retirement benefits from negotiable terms and conditions of employment. M.S.A. §§ 179.61 et seq., 179.63, subd. 18, 179.66, subd. 2.

25. Labor Relations 361

The legislature cannot commit an unfair labor practice under the Public Employment Labor Relations Act of 1971. M.S.A. § 179.61 et seq.

26. Labor Relations 62

The legislature is not a "public employer" under the Public Employment Labor Relations Act of 1971, and thus, legislative acts are not covered by the Public Employment Labor Relations Act of 1971. M.S.A. §§ 179.68, subd. 2, 179.74, subd. 2.

27. Labor Relations 396

Public employees' sole avenue of relief for a unilateral legislative change in the terms and conditions of employment under an existing collective bargaining agreement is to proceed under state and federal constitutional provisions.

28. Labor Relations 361

Legislative provision which permits various state, county and municipal employees who choose to go on unpaid leaves of absence to continue to accrue most fringe benefits does not constitute an unfair labor practice under the Public Employment Labor Relations Act of 1971. Laws 1982, 3rd Spec.Sess., c. 1, Art. 1 et seq.; M.S.A. § 179.61 et seq.

Syllabus by the Court

1. No contract or contract term, express or implied, existed between public employers and employees that guaranteed fixed levels of employee retirement contributions to the pension funds, nor does the record support appellant's claim to a fixed level of contributions based on a theory of promissory estoppel.

2. The legislative classification at issue is rationally related to the achievement of a legitimate governmental purpose, and we therefore deny appellants' equal protection challenge. We also deny appellants' uniformity clause challenge on the ground that public employee pension contributions are not a tax within the meaning of the uniformity clause.

3. Even assuming a property interest has been interfered with, that interference satisfies the demands of due process. The increase in employee contributions is ration-

ally related to a legitimate governmental purpose, and the increase is not a "taking" because it is not a public use of private funds.

4. Insofar as appellants' unfair labor practice claims concern pension contribution levels, they are without merit because such matters are not permissible subjects of bargaining. To the extent that the Act does change terms of employment which are proper subjects of bargaining, the Act does not constitute an unfair labor practice because, within the meaning of PELRA, the legislature is incapable of committing an unfair labor practice.

Gregg Corwin, Russell J. LaCourse, St. Louis Park, for AFSCME.

Roger A. Peterson, Minneapolis, for Mpls. Police Relief Ass'n, et al.

Eric R. Miller and John Tunheim, St. Paul, for Minn. Educ. Ass'n.

Jeffrey W. Jacobs, Minneapolis, for Minn. Teamsters Public and Law Enforcement Employees Union.

Joseph T. O'Neill, O'Neill, Burke & O'Neill, St. Paul, for St. Paul Police Relief Ass'n.

Gregg Corwin, St. Louis Park, for Minn. Ass'n. of Professional Employees.

Hubert H. Humphrey, III, Atty. Gen., Richard Allyn, Chief Deputy Atty. Gen., Peter M. Ackerberg, Asst. Atty. Gen., St. Paul, for Sundquist, et al.

Bruce A. Finzen, St. Paul, for amicus Intern. Union of Operating Engineers.

Julia Penny Clark, Robert H. Chanin, Bredhoff & Kaiser, Washington D.C., for amicus Nat. Educ. Ass'n.

Heard, considered and decided by the court en banc.
AMDAHL, Chief Justice.

This litigation challenges the validity of legislation passed by the Minnesota Legislature on December 10, 1982, and signed into law by Governor Albert H. Quie on December 13, 1982. Act of December 10, 1982, 3rd Spec.Sess. ch. 1, 1982 Minn.Sess. Law Serv. 1819 (the "Act"). On that same day, various parties, representing public employees affected by the terms of the Act, petitioned this court for a writ of quo warranto in an effort to prevent the enforcement of the Act. Finding that this case did not present the type of controversy which fits within the nature of quo warranto, this court issued an order, on December 20, 1982, denying the petition and remanding the case to a special three-judge district court panel for an expedited hearing. The panel consisted of retired District Court Judges Archie L. Gingold, Gordon L. McRae and Bruce C. Stone.

In conjunction with the filing of their amended complaint on December 23, 1982 appellants brought a motion for a temporary injunction seeking to immediately restrain that part of the Act increasing government employees' existing contributions to the pension funds by 2%.[1] On December 30, 1982, the trial court denied appellants' motion for a temporary injunction and set the case for trial on January 6, 1983. Thereafter, on January 24, 1983, the trial court issued its findings of fact, conclusions of law and order for judgment dismissing plaintiffs' complaint. On that same day, a notice of appeal from the order and judgment of the trial court was filed with this court.

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[1] The original plaintiffs in this action were the American Federation of State, County and Municipal Employees Councils 6, 14, 65 and 96, and the Minnesota Association of Professional Employees. On December 27, 1982, the International Union of Operating Engineers, Local 49 and Law Enforcement Labor Services, Inc., filed a motion for leave of court to file a brief *amicus curiae*. That motion was granted by the court. Shortly thereafter, approximately 15 other public employee organizations were permitted to intervene as plaintiffs. In all, there are approximately 235,000 public employees participating in public pension plans in Minnesota.

The Act was written and passed upon rather short notice in response to an imminent, and very serious, fiscal crisis facing the government of the State of Minnesota. Governor Quie called the Third Special Session of the 72nd Legislature in early December 1982 to address an anticipated short fall in state revenue of approximately $312,000,000.[2] This substantial anticipated deficit was the latest of six distinct financial crises which have been faced by Minnesota government since July of 1980.[3]

Three major factors operated to further accentuate the severity of the crisis and the need for a swift legislative response. First, the crisis was compounded by the fact that local government aids and homestead credits in excess of $1,000,000,000 were due to be paid by the state of Minnesota cities and counties in mid-December 1982. A second factor emphasizing the immediacy of the need for remedial attention was the state's obligations for $930,000,000 in short term certificates of indebtedness. These certificates were recently issued by the state to alleviate a severe cash flow problem, and contained convenants which gave unqualified priority to an impoundment schedule, commencing February 1, 1983, established to assure the satisfaction of the indebtedness upon maturity in June 1983. An additional pressure for an expeditious legislative response to this crisis was exacted by a statutory provision requiring the Commissioner of Finance to "unallot," or withhold the payment of, appropriated funds when projected revenues are insufficient to meet the state's expenses. Minn.Stat. § 16A.15, subd. 1(b) (1982). Unallotment would result in drastic cuts in funding to public agencies which, because 75-80% of the funds allotted to public agencies are appropriated for personnel costs, would fall most heavily on public employees. When viewed in this fiscal context, and against the backdrop of the measures already taken in response to previous revenue shortfalls, it is evident that this revenue shortfall did indeed present a crisis.

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[2] Governor Quie first received the news of this latest shortage in anticipated revenues on November 18, 1982, although preliminary warnings of it were available in early November in the reports compiled from the October revenue figures. Upon receiving this news, Governor Quie consulted with legislative leaders and a determination was made to convene a special legislative session.

[3] At trial, the State Budget Director testified that, prior to the enactment of the Act, the legislature had responded to the first five of the financial crises since July 1980 by enacting $1,223,000,000 worth of tax increases, $688,000,000 worth of accounting changes that shifted current obligations into subsequent accounting periods, and approximately $500,000,000 in spending cuts.

Although the Act effects a number of tax increases, spending cuts and spending shifts, the only portion of the Act challenged in this action are the provisions impacting upon the terms of public employees' employment, primarily the provision regarding public employees' pension contributions.[4] In relevant part, the Act requires that, beginning with the first full pay period after December 28, 1982, various state, county and municipal employees are required to pay an additional 2% of their salaries into their respective pension funds. This increase in employee contributions is limited in duration to the last pay period before January 1, 1984; then the preexisting formula returns. The Act also requires that, beginning with the first full pay period after December 28, 1982, and continuing until the last full pay period before July 1, 1983, employer contributions to the pension funds equal to 4 percent of salary are to be either diverted from the pension funds and credited to the general fund, or deferred altogether and not paid to the funds. It is projected that these reductions in employer contributions will save the state approximately $63,000,000. In addition, the Act provides that, until June 30, 1983, state employees who choose to go on unpaid leaves of absence may continue to accrue most fringe benefits as if they had been working during their leave periods. The Act also contains provisions which raise issues of federal taxation, the most important of which is a provision to reduce the federal adjusted gross income of public employees by the amount of their employee contributions.[5]

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[4] In addition to the Act's provisions regarding pension contributions and other terms of public employment, the legislature also reduced appropriations to state agencies, reduced education aids, reduced aids to local units of government and increased income taxes.

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[5] In order to understand the issues concerning the tax implications of the Act, it is necessary to have a general understanding of the taxation of retirement plans. The subject public employee pension plans have long been treated as "qualified" pension plans within the meaning of I.R.C. §401. Qualified retirement plans have very favorable tax consequences. The qualified plans at issue include both employer and employee contributions. The employee contribution is made from adjusted gross income, and is therefore not immediately deductible. However, both the employer contributions and the income generated by the pension corpus are tax deferred, and the only taxable event occurs when proceeds exceeding the amount of an employee's actual contributions are distributed to the employee. *See generally* Canan, *Qualified Retirement Plans* § 3.1 (1977).

The primary tax benefit created by the Act is a provision which directs that the entire employee pension contribution be "picked up"

The issues presented by this appeal can be grouped into four broad categories: (1) contract clause issues; (2) equal protection and uniformity clause issues; (3) due process issues; and (4) unfair labor practice issues.

1. CONTRACT CLAUSE ISSUES

Appellants argue that the Act unconstitutionally impairs contractual obligations between public employers and employees regarding the level of public employee pension contributions.[6] This court recently addressed the issue of

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by the employer and thereby treated for tax purposes as an employer contribution. This provision provides a substantial benefit to public employees to offset the effects of the temporary increase in employee contributions. Prior to the Act, employees made contributions to their individual pension accounts from their adjusted gross income, and their payments were therefore made from after-tax earnings. Under the Act's employer "pick up" provisions, the employee contributions will be treated as an employer contribution and each employee's gross income for federal (not state) tax purposes will be reduced by the amount of the contribution. This "pick up" provides significant benefits to employees: first, the employee's annual federal tax liability will be reduced and there will be a corresponding reduction in the amount of federal taxes withheld from an employee's net earnings; second, no tax will be paid on this money until the employee draws it out upon retirement, at which point the employee is often in a lower tax bracket. The most beneficial aspect of this provision, however, is that it applies to the employee's entire contribution, not just the additional 2%, and that the provision is a permanent benefit, and not just effective until the expiration of the additional 2% contribution on December 31, 1983. Although the effect of this pick up will vary considerably among different employees, in general it seems clear that the long-term tax benefits of this provision will operate to fully compensate employees for the payment of an additional 2% in 1983. The I.R.S. recently issued a private letter ruling which approved this tax shelter provision under I.R.C. § 414(h).

[6] The appellant's claims are limited to the implementation of the Act as it relates to a 2% increase in public employee retirement contributions and unpaid leaves of absence. Accordingly, our review of appellants' contract clause claim is restricted to the issue of whether

the nature of a public employee's interest in a public pension or retirement plan and the degree to which that interest is afforded constitutional protection. In *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W.2d 740 (Minn. 1983), we abandoned the gratuity approach in analyzing such issues in favor of an expanded contract approach. Recognizing that a conventional contract approach, with its strict rules of mutuality, can seldom operate to provide protection for specific, legitimate interests of public employees in this context, the *Christensen* case augmented the contract approach to include the closely related doctrine of promissory estoppel. *Id.* at 747. Under *Christensen*, public employees can challenge changes affecting their interests in a public pension plan under the contract clause by establishing their right to the maintenance of the preexisting terms or conditions as a matter of either express contract, implied-in-fact contract, or promissory estoppel.[7]

In the case at bar, appellants advance each of these theories in arguing that the Act unconstitutionally impairs contractual obligations between public employers and employees regarding the level of public employee pension contributions. We conclude that no contract or contract term, express or implied, existed between public employers

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contractual rights or enforceable promises exist in maintaining fixed levels of employee pension contributions. This restricted inquiry is consistent with the established practice of "not decid[ing] constitutional questions except when necessary to do so in order to dispose of the case at bar." *State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981).

[7] Another contract theory available to public employees in this context is that of unilateral contract. *See, e.g., Sylvestre v. State*, 298 Minn. 142, 156-57, 214 N.W.2d 658, 667 (1973). This theory, however, is not presented by this appeal.

and employees which guaranteed fixed levels of employee retirement contributions to the pension funds. We further hold that the record does not support appellants' claim to a fixed level of employee pension contributions based on a theory of promissory estoppel. Because we therefore affirm the trial court's findings that appellants have failed to establish a right, based either on conventional contract or promissory estoppel theories, to a fixed level of employee pension contributions, we need not address the issue of whether the Act operates to unconstitutionally impair such a right.

[1, 2] It cannot be disputed that the record contains no evidence of an express contract designating rates at which public employees must contribute to their pension funds. In the absence of an express contract, appellants argue that the legislature's promise to supply pension benefits to public employees constitutes an implied-in-fact contract to maintain employee pension contributions at a fixed level during their employment. Where the evidence does not prove the existence of an express agreement, a contract implied in fact may be established by circumstantial evidence showing a mutual intention to contract. *See Bergstedt, Wahlberg, Berquist Associates, Inc. v. Rothchild,* 302 Minn. 476, 479-80, 225 N.W.2d 261, 263 (1975). Whether a contract is to be implied in fact, and the existence of the terms of such a contract, are questions of fact to be determined by the trier of fact, and the trier's findings in this regard will not be set aside by this court unless they are found to be clearly erroneous. *Id.*, Minn.R.Civ.P. 52.01.

[3, 4] Appellants urge that the pension plans themselves constitute contracts between public employees and their employer, and that the maintenance of employee

pension contributions at a fixed level may be implied as a term of these contracts. The trial court found, however, that a contract right to the maintenance of fixed employee contribution levels could not be implied from evidence in the record concerning the pension plans. In so finding, the trial court relied, in part, upon specific statutory provisions which greatly restrict the contract rights created by the establishment and maintenance of public pension plans. For example, in Minn.Stat. § 353.38 (1982), the legislature addressed the rights of members of the Public Employees Retirement Association by providing that:

> Nothing done under the terms of this chapter and acts amendatory thereof shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association through separation from the public services, the accumulated deductions, as by law defined, standing to his credit on the books of the association.

Similar restrictive statutory provisions exist with regard to most of the state's other major public retirement funds. *See, e.g.*, Minn.Stat. §§ 354.07, subd. 8 (teachers' retirement fund, 352.022 (1982) (state retirement fund); *see also* Minn.Stat. 645.27 (1982) (state not bound by statute unless statute expressly provides). These statutes clearly support the trial court's conclusion that the legislature did not intend to enter into a contractual obligation with public employees concerning a particular rate of employee contributions to the pension plans.[8] We therefore affirm, as not clearly erroneous, the trial court's finding that no implied contract exists.

[5] Relying upon the doctrine of promissory estoppel, appellants next contend that the legislature promised that their contribution levels would remain fixed throughout their contribution periods and that they relied upon that promise to their detriment. Promissory estoppel is applicable when (1) a promise has been made, (2) which the promisor expected or should have reasonably expected to induce action of a definite and substantial character by the promisee, (3) which in fact induced such action, and (4) in circumstances requiring the enforcement of the promise to avoid injustice. *See Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981); Restate-

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[8] Appellants also argue that the compensation provisions negotiated in their collective bargaining agreements reflect an implied contract concerning levels of employee retirement contributions. This argument presupposes that the terms of existing agreements were agreed to by negotiators in conjunction with an agreement upon a fixed rate of employee pension contributions. As is treated more fully in the discussion concerning the unfair labor practice issues raised by this appeal, pursuant to Minn. Stat. § 179.63, subd. 18 (1982), pension issues are not a permissible subject of bargaining. Rather, the legislative history of the Public Employees Labor Relations Act of 1971 demonstrates a clear legislative intent to retain broad discretion in determining conditions, classifications and membership in public pension plans. Minn.Stat. § 353.38 (1982), and related statutes, reflect a legislative determination to exercise this discretion with flexibility in a manner deemed by the legislature to be in the best interests of both public employees and the public generally. This court must extend considerable deference to the legislature's exercise of that discretion. *Cf. Grossman v. Gilchrist*, 519 F.Supp. 173, 178 (N.D.Ill.1981), *aff'd*, 676 F.2d 701 (7th Cir. 1982) (rationality analysis does not permit court to substitute its judgment for that of the legislature concerning conditions of participation in public employee retirements plans).

ment (Second) of Contracts § 90 (1981). The trial court found both that the legislature made no promise regarding fixed employee pension contribution levels and that, even if such a promise had been made, the appellants did not establish the essential element of detrimental reliance. These findings must be upheld unless they are shown to be clearly erroneous. Minn.R.Civ.P. 52.01.

[6] Appellants have failed to designate evidence in the record which tends to establish that the legislature made any promise to maintain employee contributions to the pension plans at a fixed level during the contribution period.[9] To the contrary, the record shows that the state had varied contribution levels in the past within a number of the pension funds at issue and that employees were aware of such changes. Consequently, appellants were unable to produce a single witness to testify to any reliance on a fixed, unchanging level of employee contributions. This record belies the appellants' claim to promissory estoppel.[10]

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[9] The provisions of the Act do not affect either the requirements for pension benefits or the levels of those benefits. Therefore, in contrast to the promise enforced in *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W.2d 740 (Minn. 1983), appellants concede that the Act does not affect their expectations concerning the benefits available to them upon leaving public employment. Rather, appellants' claim to promissory estoppel rests upon the allegation that they detrimentally relied upon their employer's promise to maintain employee contribution levels at a fixed rate.

[10] Although it does not distinguish the independent legal standards applicable to the separate contract theories at issue, the dissenting opinion appears to rely upon the doctrine of promissory estoppel in concluding that the Act's employee pension contribution provisions are invalid. In so concluding, the dissent both fails to apply appropriate legal standards and inaccurately characterizes evidence in the record, and these omissions merit some comment.

In this regard, we endorse the following conclusion of the trial court:

> Promissory estoppel is an equitable doctrine which is triggered by a showing of reasonable and substantial detrimental reliance upon a promise. In this action's present procedural posture, the dissent's theory can only be supported through a discussion of evidence in the record which not only establishes the existence of both the promise and the substantial detrimental reliance, but which also is sufficiently compelling to support the determination that the trial court's findings to the contrary are clearly erroneous. The dissent's discussion fails to meet these legal standards.
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> Additionally, in its effort to designate the nature of the alleged promise the dissent mischaracterizes the evidence. The dissent apparently concedes that the evidence supports the trial court's finding that the legislature made no promise to maintain employee pension contributions at a fixed level. The dissent maintains, however, that the legislature's past financial management of public pensions constitutes a promise that employer contributions will always "match" (i.e., equal the amount of) employee contributions to meet normal costs, and that contributions will only be increased in conjunction with an increase in benefits. The dissent bases its analysis upon the following conclusion: "Since * * * 1957, employer contributions have matched employee contributions." The dissent also states: "Increases in contributions since the 1950's have been, in every instance, accompanied by increases in benefits." Both of these statements are inaccurate.
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> The record in this case clearly reflects the facts that employer contributions have not always matched employee contributions, and that contributions have been increased for purposes other than the increase of pension benefits. For example, Karen Dudley, the Executive Secretary of the Legislature's Commission on Pensions and Retirement, was quite clear in her testimony regarding these points:
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> Q. I notice * * * that the [Legislative Commission on Pensions and Retirement] is recommending [in its report to the Legislature] that for regular public-employees the employee-employer should make matching contributions to meet normal costs. Has the Legislature always followed this advice? A. No, it has not.
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> * * * * * * *
>
> Q. During these years [1957-1980], has the Legislature changed benefit levels for the various plans? A. Yes.
>
> Q. Have they made changes in the contribution levels, both for employer and employee? A. Yes.
>
> Q. For the various plans? A. Yes.
>
> Q. Have the contribution levels of either the employer or employee always been tied to an increase in benefits? A. No.

> There is no basis for the contention that, no matter what the legislature has said, what it has done is induce employee contributors to rely on the expectation that contributions levels would remain fixed. The employee contributions, the employer contributions, and the appropriations to cover unfunded liabilities have been modified on a number of occasions in the past decade. Therefore, an employee aware enough of his or her pension contribution rate to formulate some kind of reliance interest would be aware that these contribution levels have fluctuated over time. Given that history, an expectation that contribution rates would remain fixed is patently unreasonable.

We conclude that the trial court's findings that the state made no promise regarding guaranteed levels of employee contributions, and that, even if such a promise had been

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Ms. Dudley's testimony provides the requisite evidence to support the trial court's findings, and can be easily verified through independent research. For example, with regard to the fact that employer contributions have always matched employee contributions, see Act of March 27, 1974, ch. 289, § 20-21, 1974 Minn. Laws 442, 450-51 (amending Minn. Stat. § 354-42 (Supp. 1973) (to temporarily establish contribution rates to the Teachers' Retirement Association of 4% for employees and 3½% for the employer), and Minn. Stat. § 352.92 (1982) (establishing contribution rates for correctional employee members of the Minnesota State Retirement System which requires the employer to pay at least 1½ times the amount contributed by the employee). Similarly, to confirm that contribution levels have been increased without an accompanying increase in benefits, see Act of May 31, 1979, ch. 293, § 1, 1979 Minn. Laws 641, 641-42 (amending Minn. Stat. § 354.42, subd. 3 (1978), to raise the employer contribution level in response to concerns of the actuary regarding funding levels, and without an accompanying increase in benefits). We can only reiterate that a careful review of the record compels the conclusion that the trial court properly denied the appellants' claim to promissory estoppel.

made, appellants have not established that they reasonably and detrimentally relied upon such a promise, are not clearly erroneous.

2. EQUAL PROTECTION AND UNIFORMITY CLAUSE ISSUES

Appellants argue that the Act is violative of both federal and state constitutional guarantees of equal protection and of the state constitutional guarantee of uniformity of taxation. With regard to appellants' equal protection challenge, we hold that the legislative classification at issue is rationally related to the achievement of a legitimate governmental purpose. Similarly, we reject appellants' uniformity clause challenge on the ground that public employee pension contributions are not a tax within the meaning of that constitutional provision.

[7-10] It is not disputed that the standard of review applicable to this case under both the state and federal equal protection clauses is the "rational basis"[11] test. Although we have expressed this standard in various ways,[12] the pre-

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[11] We have recognized that the standard applied to claims brought under the state equal protection clause, Minn. Const. art. 1, § 2, is the same as that applied to claims brought under the federal equal protection clause, U.S. Const. amend XIV, § 1. *See State v. Forge*, 262 N.W.2d 341, 347 n. 23 (Minn. 1977); *Minneapolis Federation of Teachers Local 59 v. Obermeyer*, 275 Minn. 347, 354, 147 N.W.2d 358, 363 (1966).

[12] A recurring expression of this rational basis standard is the following three-part test, which operates to uphold legislative classifications if:

(1) the classification uniformly, without discrimination, applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation;

eminent expression of rationality analysis under the equal protection clause is the requirement that legislative classifications make distinctions which are rationally related to legitimate legislative goals or interests. *See, e.g. Minnesota Clover Leaf Creamery Co.,* 449 U.S. 456, 461-63, 101 S.Ct. 715, 722, 66 L.Ed.2d 659 (1981); *State v. Hopf,* 323 N.W.2d 746, 753 (Minn.1982). As the United States Su-

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(2) the distinctions which separate those who are included within the classification from those who are excluded are not manifestly arbitrary or fanciful, but are genuine and substantial so as to provide a natural and reasonable basis in the necessity or circumstances of the members of the classification to justify different legislation adapted to their peculiar conditions and needs; and

(3) the classification is germane or relevant to the purpose of the law, that is, there must be an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefore which the law purports to provide.

We first applied this three-part test in *Loew v. Hagerle Bros.,* 226 Minn. 485, 489, 33 N.W.2d 598, 601 (1948), in the context of a challenge brought under the special legislation prohibition of the Minnesota Constitution, Minn. Const. art. XII, § 1. Subsequently, we have applied the three-part test developed in *Loew* in a number of cases arising under the state and federal equal protection clauses. *See, e.g., Nelson v. Peterson,* 313 N.W.2d 580, 581 (Minn. 1981). The three-part test developed in *Loew* has also been carried over to the analogous context of challenges to tax statutes brought under the uniformity clause of the Minnesota Constitution, Minn. Const. art X, § 1. *See, e.g., Guilliams v. Commissioner of Revenue,* 299 N.W.2d 138, 142 (Minn. 1980). Some confusion has consequently arisen regarding both the propriety of applying the three-part test developed in *Loew* in these different contexts, and the degree to which our use of that test in the interpretation of the Minnesota Constitution indicates a departure from the standard of rationality analysis developed by the United States Supreme Court for application in cases arising under the federal equal protection clause. We therefore reiterate that the prohibition against arbitrary legislative action embodied in the state equal protection clause, Minn. Const. art. 1, § 2, the state uniformity clause, Minn. Const. art. X, § 1. an dthe state special legislation clause, Minn. Const. art XII, § 1, are coextensive with those afforded by the federal equal protection clause, U.S. Const. amend. XIV, § 1.

preme Court recently noted, the application of this standard entails two basic inquiries:

> In determining whether a challenged classification is rationally related to achievement of a legitimate state purpose, we must answer two questions: (1) Does the challenged legislation have a legitimate purpose: and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?

Western & Southern Life Insurance Co. v. State Board of Equalization, 451 U.S. 648, 668, 101 S.Ct. 2070, 2083, 68 L.Ed.2d 514 (1981) (citations omitted). At the outset, however, it must be recognized that statutes carry a presumption of constitutionality, and that it is not the role of the judiciary, in applying the rational basis standard, to question either the factual accuracy or political wisdom of the reasoning and judgments underlying the legislative enactment. *See, e.g. Estate of Petroff*, 319 N.W.2d 400, 405 n. 10 (Minn.1982); *Nelson v. Peterson*, 313 N.W.2d 580, 581 n. 2 (Minn.1981).

[11, 12] It is not disputed that the impetus for the Act was a sudden determination that revenues actually available to the state in meeting its budgeted obligations would be precariously less than the figure which had been relied upon from previous projections. Acting within this fiscal context and under heavy time pressures, the legislature sought to achieve a balanced corrective approach which combined tax increases, budget cuts shifts in an effort to spread the impact

of the effects of the legislation.[13] Thus, the purpose of the Act, as stated by the legislature, is to correct the state's grave fiscal condition without creating undue economic displacement.[14] Among the many budget cuts contained in the Act,

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[13] Commenting upon the Act's legislative history, the dissent states that "the legislature did not sufficiently consider other fiscal relief measures * * *," and that "[t]here is no indication that the sought-after $63.5 million was obtainable nowhere else than from public employees' pockets." However, the record repeatedly shows, perhaps most clearly through the testimony of State Budget Director Val Vikmanis who was the primary official of the executive branch informing the legislature of the options available to it in responding to the fiscal crisis, that the legislature considered enacting a number of different combinations of the following measures: unallotment (which was originally proposed as a 28.6% across-the-board reduction in available appropriations), raising the sales tax, raising the surtax on individual income, budget shifts such as shifting the recognition of revenue from property taxes to delay the payment of state aids to school districts, reducing contributions to the pension funds, reducing local government aids, reducing school aids, and reducing the budgets of all state agencies. The record is clear in demonstrating that the legislature carefully considered each of these fiscal relief measures, and that in doing so the legislature also reviewed the merits of proposals to meet the deficit through different combinations of these measures. Apparently it should be emphasized that we are reviewing the limited question of the extent of the legislature's authority, and that it is not our role to make determinations regarding the economic efficiency or political effect of the legislative enactment.

[14] In challenges to statutes under the equal protection clause, we accept legislative expressions regarding the purposes of the legislation as the actual purposes unless our review of the legislative history and the statutory scheme convinces us that they "could not have been a goal of the legislation." *Minnesota v. Clover Leaf Creamery Co.*, 440 U.S. 456, 463 n. 7, 101 S.Ct. 715, 723 n. 7, 66 L.Ed.2d 659 (1981) (*quoting Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n. 16, 95 S.Ct. 1225, 1223 n. 16, 43 L.Ed.2d 514 (1975).) Here, a review of the legislative history and the statutory scheme confirms that the purposes stated in the Act's preamble are its actual purposes.

In its Preamble, the Act states that Minnesota "is presently confronted with a grave economic emergency" and that "legislation designed to correct this economic emergency must not create undue economic or all of which were enacted for the purpose of reducing the budget deficit by decreasing state expenditures, are those which temporarily decrease employer pension contributions. The challenged provisions which correspondingly require a temporary increase in employee pension contributions were included for the purpose of preventing the undue economic dislocations which would otherwise have resulted from the significant increase in the unfunded liability of the public pension funds caused by budget cuts.[15] We conclude that these are the purposes of the challenged provisions of the Act, and that these purposes are legitimate. We therefore turn to the dispositive issue in appellants' equal protection challenge and assess the claim that, in designing the Act to achieve these purposes, the legislature irrationally treats differently persons who are similarly situate.

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social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government." Act of December 10, 1982, 3rd Spec.Sess. ch. 1, art 1, § 1, 1982 Minn.Sess. Law Serv. 1819, 1820.

[15] The budget crisis was a "no-win" situation in the sense that it presented the legislature with only unsavory alternatives. Because of the vast size of the deficit, and because personnel costs constitute approximately 75 to 85% of the state budget, it was apparent that any substantial budget cuts would dramatically affect public employees in some manner. Once the political decision was made to enact budget cuts as part of the legislative response to the deficit, the alternative of reducing employer pension contributions was explored. Because of the state's strong reliance upon debt financing and in recognition of the prominent role which the state's recent efforts to reduce the unfunded liabilities in its pension plans has played in the favorable opinions of agencies which rate the credit of state and local units of government, the Legislature had to ensure that a decrease in employer pension contributions would not have an unfavorable impact upon the state's credit rating. Moreover, there was considerable concern that a $64,000,000 reduction in pension contributions would cause too much damage to the actuarial soundness of the plans.

[13-17] Appellants advance a number of arguments in an effort to support their contention that the Act classifies persons who are similarly situated in a manner which, when viewed in relation to the purpose of the Act, is wholly irrational. First, appellants argue that the employee contribution provision is not rationally related to its underlying purpose because the provision, which does not affect all public employee pensioners, is impermissibly underinclusive.[16] The

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Effecting a corresponding increase in employee contributions was an obvious answer to these concerns, but the legislature was initially unwilling to impose such a financial hardship on public employees. When it was later determined, however, that the legislature could, through imposing some relatively insignificant new restrictions upon the operation of the pension plans, provide a permanent and very advantageous "tax shelter" benefit to public employees which would operate to more than compensate these employees for the temporary increase in employee contributions, the political decision to enact the pension contribution provisions was made. This record demonstrates that the legislature proceeded with care and creativity to enact a program of budget cuts which would be least harmful to employees of state and local government.

[16] Appellants also argue that the provision increasing employee contribution creates a classification distinguishing public from nonpublic employees which is not rationally related to the achievement of the purposes of that provision. This argument is without merit. The purposes of the provision which temporarily raises public employee pension contributions 2% are to maintain the actuarial soundness of those portions of the public retirement system affected by the budget cuts and to thereby, albeit indirectly, enhance the general financial posture of state government. In drafting the challenged provision, the legislature did not make a classification which distinguished public from nonpublic employees. Nonpublic employees do not contribute, and are not beneficiaries of, public retirement systems. The two purported "classes" were not similarly situated because the legislature was not in a position to raise the pension contribution rates of nonpublic employees, nor would such a provision have furthered the purposes of the Act. Put another way, the requirement that only public, and not nonpublic, employees temporarily contribute an additional 2% of salary to their pension funds is rationally related

class of public employees not affected by the employee contribution provisions of the Act is the University of Minnesota faculty, and appellants contend that there is no rational basis for this omission. There are, however, a number of considerations which support the rationality of the legislature's decision to exempt University faculty from the obligation to increase their pension contributions. University faculty have a separate pension fund and employer contributions to this fund were not affected by the Act.[17] Thus, if the purpose of the challenged provision was to maintain the actuarial integrity of the public pension funds affected by the Act's budget cuts, it was rational to exclude the unaffected plan of the University of Minnesota faculty. Moreover, the legislature's initial failure to reduce employer contributions to the University faculty's pension plan was not irrational. In order for the legislature to have effectuated a four percent reduction of employer contributions to the University faculty's pension plan, state appropriations to the University would have had to have been "earmarked," or specifically set aside for that purpose. *See Regents of the*

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to the legitimate state interest in preventing undue economic displacement by maintaining the actuarial integrity of the public retirement system.

[17] In determining the unique status of the University faculty's pension plan, the Commission on Pensions and Retirement stated:

> One plan is not established specifically by statute and is not governed to any substantial extent by statute or special law other than the actuarial reporting required under Minnesota Statutes, Chapter 356. [*See* Minn.Stat. § 356.20, subds. 2(9), (10) (1982)] This plan is the University of Minnesota Faculty Retirement Plan. Policy determinations for this plan lies with the Board of Regents of the University of Minnesota.

Legislative Commission on Pensions and Retirement, Report to the 1979-1980 Minnesota State Legislature, at 12.

University of Minnesota v. Lord, 257 N.W.2d 796, 800-01 (Minn.1977). Under the Minnesota Constitution, such conditions may be an improper invasion of the management prerogatives of the Board of Regents and, in any event, the Board of Regents may decide whether or not to accept appropriations made with such conditions. *Id.,* Minn. Const. art. XIII, § 3. The independent nature of the University faculty's pension fund, and the fact that that fund was not affected by the Act's budget cuts, provide a rational basis for the omission of the University faculty from the Act's employee contribution provisions.[18]

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[18] In addressing appellants' equal protection challenge regarding the omission of the University faculty, the dissent asserts that it is a denial of equal protection to increase any public employee's pension contributions without similarly increasing the pension contribution of *all* other public employees. The application of such a *per se* rule is inappropriate under any standard of equal protection, but is particularly improper in the context of a review of the rational basis of a legislative act. Appellants concede that the applicable constitutional standard is the rational basis test, and this test does not remotely correspond to the dissent's blanket prohibition. Rather, under the applicable standard, the proper judicial inquiry is whether the challenged legislative classification is rationally related to a legitimate governmental interest.

Perhaps the dissent means to suggest that legislation which raises the pension contribution rates of one group of public employees without imposing a corresponding increase upon all other public employees can never be rationally related to a legitimate governmental interest. This proposition also lacks merit. It must be remembered that there are 640 different plans which provide retirement benefits to approximately 225,000 public employees in Minnesota, and that these plans "reflect a very complex picture of varying structure, legal authority, membership coverage, benefits, costs and fiinancing." Legislative Commission on Pensions and Retirement, Report to the 1979-1980 Minnesota State Legislature, at 8. There are a number of legitimate purposes for which contribution levels to any one of the 640 plans may be changed, including the financial condition of the particular plan, the changing of that plan's benefit levels and general budget considerations. The rationality of an increase in contribution levels to

Appellants' primary argument in the equal protection context is that the increased employee pension contributions, when considered in conjunction with the purpose and effect of the related decrease in employer contributions, constitutes a discriminatory tax. In other words, appellants contend that, although the increase in employee contributions is physically paid into the pension funds, the increase of employee contributions replaces employer contributions which are withheld for general fund purposes and that this, in effect, is a payroll tax which directly benefits the state general fund. Constitutional challenges of a tax as discriminatory arise under the federal equal protection clause and the state uniformity clause.[19] The requisite initial determination in any analysis under the uniformity clause is that the challenged provision is, indeed, a tax. We conclude that the increased employee pension contribution is not a tax and we therefore reject appellants' uniformity clause challenge.

The characteristics of the increase in employee pension contributions differ significantly from those of a tax. These different characteristics include the facts that employee pension contributions are credited to the employee's individual retirement account, and that the contributions entitle the employee to receive pension benefits upon retirement. Therefore, unlike a tax, the pension contribution inures to the benefit of the employee upon his retirement, and is not collected for the benefit of the public generally. As stated by the

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participants in any one plan must be assessed on its merits by reference to the purposes for which the increase was imposed. Contrary to the position of the dissent, any such change would not necessarily be wholly unrelated to any legitimate governmental interest.

[19] As previously indicated, the state uniformity clause, Minn. Const. art. X, § 1, restricts the legislature's ability to tax to the same extent as the federal equal protection clause.

trial court, "[i]t is definitely not the nature of a tax that it should inure to the direct financial gain of the taxpayer." These characteristics distinguish pension contributions from taxes. *See Gossman v. State Employees Retirement System*, 177 Neb. 326, 332-33, 129 N.W.2d 97, 102 (1964) (public employee pension contribution held not to be a tax because not "an exaction or tax for the purposes of carrying on the general functions of government"). The absence of a tax is dispositive of appellants' uniformity clause challenge.

3. DUE PROCESS ISSUES

Appellants' claim that the Act violates the substantive guarantees of due process has two components.[20] In a variation of the arguments made in the equal protection context, appellants first contend that the provisions of the Act increasing employee pension contributions are not rationally related to a legitimate governmental purpose and therefore violate both the state due process clause, Minn. Const. art. I, § 7, and the due process clause of the fourteenth amendment, U.S. Const. amend. XIV.[21] Second, appellants argue that increased employee pension contributions constitute a "taking" of property for a public use without just compensation. Constitutional prohibitions of such uncompensated expropriations exist in both the federal constitution, U.S. Const. amend V,[22] and the state constitution, Minn. Const. art. I, § 13.

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[20] Appellants do not contend that the challenged governmental action was the result of an unfair procedure, and this appeal therefore does not raise "procedural" due process issues.

[21] We have repeatedly recognized that our state due process clause is not more restrictive than the federal due process clause. *See, e.g., Shreve v. Department of Economic Security*, 283 N.W.2d 506, 509 (Minn. 1979); *Anderson v. City of St. Paul*, 226 Minn. 186, 190, 32 N.W.2d 538, 541 (1948). We will therefore apply a common standard in our discussion of the challenges brought under the separate clauses.

[18, 19] The threshold determination in a due process claim is whether the interest allegedly interfered with rises to the level of a constitutionally protected "liberty" or "property" interest. Appellants present two arguments in an effort to establish a constitutionally protected property interest that has been affected by the increase in employee pension contributions.[23] First, appellants argue that they have a contractual right in employee contributions levels that has been altered by the Act. It is recognized that contractual rights are a form of property within the meaning of the due process clause. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 19 n. 16, 97 S.Ct. 1505, 1516 n. 16, 52 L.Ed.2d 92 (1977). Appellants' claim to such property fails, however, because, as is treated more fully in our discussion of appellants' claim under the contract clause, we reject the theory that appellants ever had a contractual right to fixed levels of employee pension contributions.

[20] A second theory advanced by appellants is that they have a property interest in their individual salaries which has been interfered with. Although it is clear that salary is a form of property protected by the guarantees of

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[22] The Fifth Amendment's proscription of the uncompensated taking of private property for public uses has, of course, been applied to state action through the fourteenth amendment. *See, e.g., Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 122, 98 S.Ct. 2646, 2658, 57 L.Ed.2d 631 (1978).

[23] Appellants do not allege, and the record does not show, that the increase in employee pension contributions interferes with a protected "liberty" interest.

due process, it is unclear whether this interest has been interfered with to an extent which requires an analysis of whether that interference meets due process standards. Appellants concede that the Act does not affect the gross salaries of public employees. Appellants maintain, however, that it is the Act's effects upon employees' net salaries which constitutes the impermissible interference. Yet, the Act's effects upon the net salaries of public employees is, in most cases, beneficial. It is true that the net salaries of affected public employees will be temporarily reduced by two percent. Countervailing this temporary decrease, however, is the long term net increase conferred by the "pick-up" provision of the Act which permits an employee's total pension contribution to be treated for federal income tax purposes as an employer contribution. This "pick up" provision is permanent and will result in a substantial federal income tax savings. *See supra* note 5. In most cases, and even considering the two percent increase in employee pension contributions, the Act will operate to provide public employees more disposable income than would have been available to them if the Act had never been enacted.

Even if we assume, however, that appellants have demonstrated a property right which has been interfered with, it is clear that that interference satisfies the demands of due process. With regard to appellants' due process challenge to the rationality of the Act, our rationality analysis in the due process context is no more restrictive than that conducted in the equal protection context. *See, e.g., Guilliams v. Commissioner of Revenue,* 299 N.W.2d 138, 144 (Minn.1980). Therefore, for the reasons discussed above in our analysis of appellants' equal protection challenge, we reiterate our conclusion that the temporary increase is rationally related to a legitimate governmental purpose.

[21, 22] With regard to appellants' "taking" claim, the constitutional prohibition against governmental expropriation of private property applies only when it is demonstrated that that property has been taken for public purposes. *See generally* L. Tribe, *American Constitutional Law,* § 9-2 (1978). Here the increased employee pension contributions were enacted for the purpose of maintaining the actuarial integrity of the public employee pension funds. This action benefits the contributors themselves, and is not a public use within the meaning of the constitutional proscription because only the contributing members can be beneficiaries of the pension plans. *See Stevens v. Board of Trustees of the Police Pension Fund of Shreveport,* 370 So.2d 528, 531 (La. 1979) (public employee's pension contribution not a public use of private funds). Accordingly, assuming the requisite interference with a property right, there has been no impermissible taking of private property for a public use.

4. UNFAIR LABOR PRACTICE ISSUES

[23] Appellants argue that employee pension contribution levels are a subject of bargaining which the legislature cannot unilaterally change without committing an unfair labor practice. Originally enacted in response to widespread dissatisfaction with the prevailing system of public employment labor relations, the Public Employment Labor Relations Act of 1971 (PELRA) provides a comprehensive structure for conflict resolution in public employment. *See generally* Note, *The Minnesota Public Employment Labor Relations Act of 1971: Another Public Employment Experiment,* 57 Minn.L. Rev. 134 (1972). Pursuant to Minn.Stat. § 179.66, subd. 2 (1982), PELRA places an obligation

upon public employers to negotiate "terms and conditions of employment," which in relevant part are defined, at Minn. Stat. § 179.63, subd. 18 (1982), as: "the hours of employment, the compensation therefor including fringe benefits *except retirement contributions or benefits,* and the employer's personnel policies affecting the working conditions of the employees." (Emphasis added). Appellant's primary argument in support of their theory that the Act constitutes an unfair labor practice under PELRA is that the Act's 2% increase in employee contributions is violative of the employer's obligation to collectively bargain terms and conditions of employment. Although appellants concede that the express exclusion of "retirement contributions or benefits" in PELRA's definition of terms and conditions of employment removes the issue of employee pension contributions from the category of mandatory subjects of bargaining they nonetheless argue that this statutory exclusion has no effect upon the status of employee contributions as a permissive subject of bargaining upon which, because contribution levels had been implicity bargained into existing agreements,[24] the employer was obligated to negotiate.

Appellants advance two arguments in support of their contention that pension contribution levels are a permissive subject of bargaining. First, appellants rely upon a 1975 letter to that effect from an attorney general's staff attorney who was assigned to the Metropolitan Transit Commission. This letter, however, is apparently not a formal opinion of the attorney general and, in any event, is not binding upon this court. *See, e.g., Village of Blaine v. Independent School District No. 12,* 272 Minn. 343, 353, 138 N.W.2d 32, 39 (1965). Second, appellants argue that the absence of a reference to retirement contributions or benefits in the provision of PELRA which lists matters upon which the public employer is not obligated to negotiate establishes that PELRA does not prohibit negotiations on these subjects. *See* Minn.Stat. § 179.66, subd. 1 (1982). In view of the fact that the cited provision expressly provides that it contains a nonexclusive list, this argument is hardly persuasive.

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[24] Appellant's contention that employee contribution levels are implicitly fixed in existing collective bargaining agreements is based on the rationale that the terms and conditions specified in existing agreements were agreed to by negotiators in reliance upon a fixed rate of employee pension contributions. Even assuming that such "implicit bargaining" did occur, it is clear that appellants' contention is premised upon the legal conclusion that pension issues are a permissible subject of bargaining. However, we conclude that PELRA's express exclusion of pension considerations from the definition of terms and conditions of employment was established to take all pension issues completely out of the scope of permissible bargaining, and that it is consequently illegal to agree to provisions, express or implied, which purport to restrict the legislature's freedom to act with respect to such issues.

A review of the legislative history of PELRA indicates that pension contribution levels were never intended to be a permissible subject of bargaining. The statutory exclusion of "retirement contributions or benefits" from the scope of bargainable "terms and conditions of employment" was added as an amendment to PELRA in 1973. Act of May 24, 1973, ch. 635, § 6, 1973 Minn.Laws 1526, 1527. The author of the amendment, Representative Donald Moe, explained the purpose of the exclusion when he offered the amendment before the House Committee on Governmental Operations: "The purpose of the amendment is to take the negotiation of pension benefits out of the bill and preserve the present situation with regard to pension benefits and that is to keep them within the realm of the legislature." Statement of Rep. Donald Moe, House Committee on Governmental Operations, March 13, 1973. Representative Moe went on to explain that the exclusion was necessary to prevent the decentralized and discordant administration of public pensions, and to maintain legislative discretion over significant matters of budgetary policy. *Id.* This legislative record reflects a legislative intent to remove pension issues from the scope of permissible bargaining.

[24] Reviewing a statutory scheme of public employment relations which, in relevant part, is very similar to PELRA, the Iowa Supreme Court recently addressed this issue of the effect of a statutory exclusion of retirement issues from the scope of bargaining. In *City of Mason City v. Public Employment Relations Board,* 316 N.W.2d 851 (Iowa 1982), the Iowa court fund that the legislative intent underlying the statutory exclusion was to completely remove issues regarding pensions from the scope of collective bargaining. *Id.* at 854. In so holding, the Iowa court identified three policy considerations which support the prohibition against negotiations concerning pension systems: (1) to permit employers to contain the rising cost of pension benefits; (2) to permit the legislature to participate in the making of significant government policy; and (3) to promote uniformity and to prevent the existence of disparate benefits between different funds based upon the skill and success of employees' bargaining representative. *Id.* We rely upon this reasoning and this evidence of legislative intent and hold that, pursuant to the exclusion in Minn.Stat. § 179.63, subd. 18 (1982), public pension issues are not subjects which may be collectively bargained.[25]

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[25] Another argument presented by appellants in support of an unfair labor practice theory is that the Act's two percent employee contribution requirement results in a two percent decrease in the actual salary or wage of each employee which, because wages are clearly a negoti-

Pursuing a separate unfair labor practice theory, appellants argue that the Act's provision which permits employees who choose to go on unpaid leaves of absence to continue to accrue most fringe benefits is a subject of bargaining which the legislature cannot unilaterally change without committing an unfair labor practice under PELRA. The Act provides that, until June 30, 1983, state employees who choose to go on unpaid leaves of absence may continue to accrue most fringe benefits as if they had been working during their leave periods. The accrual of such benefits in these circumstances was not permitted in any existing collective bargaining agreements, so there is no question that a unilateral change in the terms of existing contracts was made. The State Budget Director testified that the purpose of the provision was to save approximately $4,500,000 to help solve the state's immediate cash flow problem and to provide a benefit to employees that would offset any short-term losses caused by the increase in employee retirement contributions. Appellants challenge this "unpaid leave" provision on the ground that it constitutes an unfair labor practice because it produces a change in the terms and conditions of employment which was not collectively bargained.

[25-27] We hold that the legislature cannot commit an unfair labor practice under PELRA. Because the pro-

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able term of employment and the Act was not negotiated, constitutes an unfair labor practice. This argument is essentially an attempt at an "end-run" around PELRA's exclusion of retirement benefits from negotiable terms and conditions of employment. Because we hold that the statutory exclusion bars negotiations regarding pension contributions, we also hold that the consequences upon net salaries which result from an exercise of legislative discretion over pension contributions are permissible as a necessary incident of the scope of the statutory exclusion.

vision of PELRA that concerns employer unfair labor practices applies only to "public employers," Minn.Stat. § 179.68, subd. 2 (1982), and because the Legislature is not a "public employer" under PELRA, Minn.Stat. § 179.74, subd. 2 (1982), legislative acts are not covered by PELRA. Public employees' sole avenue of relief for a unilateral legislative change in the terms and conditions of employment under an existing collective bargaining agreement is to proceed under state and federal constitutional provisions. Appellants contend that the collective bargaining process will be wholly undermined if the legislature is permitted to make unilateral changes after an agreement has already been reviewed and ratified. Any unilateral legislative change would, however, still be subject to constitutional constraints. These constraints, such as the standards discussed above regarding the guarantees of equal protection and due process and the constitutional prohibition of the impairment of contracts, would appear to respond to appellants' fears by operating to invalidate legislative actions which are arbitrary or irrational, or which do not further overriding public interests.

[28] Support for the view that legislative acts are not governed by PELRA can be found in *Minnesota Education Association v. State of Minnesota,* 282 N.W.2d 915 (Minn. 1979), *appeal dismissed,* 444 U.S. 1062, 100 S.Ct. 1001, 62 L.Ed.2d 744 (1980). In that case, an arbitrator's award, rendered after an impasse in negotiations, was changed by the legislature during its ratification of the award. This unilateral change in the terms and conditions of employment was challenged, in part, on the ground that the legislature had no authority under PELRA to modify an arbitration

award. In upholding the legislature's action, we reviewed the legislative history of PELRA and concluded that the legislature had reserved the "right to modify all contracts, including arbitration awards." *Id.*, 282 N.W.2d at 918. The policy reasons discussed in support of this holding are "the necessity for the representatives of the people to retain final control over appropriations and to apply uniform budgetary considerations to numerous bargaining units." *Id.* Appellants attempt to distinguish *Minnesota Education Association* by arguing that its holding applies only to the authority of the legislature to modify terms and conditions of employment in conjunction with its approval of state employee collective bargaining agreements, and that the holding cannot be extended to apply where, as in the case at bar, the legislature enacts a unilateral change after it has previously approved an agreement. Although these changed circumstances may trigger greater constitutional constraints upon the legislature's ability to act, we find that the policy considerations found controlling in the challenge to the legislature's power to act under PELRA in *Minnesota Education Association* apply with equal force to the issue of legislative authority in the present context. Accordingly, we hold that the legislative enactment of the "unpaid leave" provision does not constitute an unfair labor practice under PELRA.

Affirmed.

YETKA, Justice (dissenting).

I respectfully dissent. Because I would hold that the mandatory 2% withholding provision is a tax that violates the state uniformity clause, Minn. Const. art. X, § 1, and an unconstitutional impairment of contract, Minn. Const. art. I, § 11, I would reverse the decision of the district court.

Nearly a year ago, in my dissent in *In re U.S. Steel Corporation v. State of Minnesota,* 324 N.W.2d 638 (1982), I wrote:

> We all must remember that our constitutions—both state and federal—were intended to protect not only one citizen from another, but also to protect all citizens from oppressive acts of the government. If the legislature can strike an illegal blow at the mighty and be permitted to get away with it, it can more easily strike again at those least able to respond. I think there is a point at which to call a halt to such activity, and this is a good opportunity.

Id. at 647 (Yetka, J., dissenting). Here, public employees are the victims of an illegal act of the legislature less than a year later!

I surely agree that we must give great deference to a legislative act, but the constitution was written for the courts to interpret. We must not allow the constitutional language to be an illusionary protection only.[1] To uphold the authority of the legislature to levy a tax on public employees, while excluding the general public, and unilaterally to deprive state employees of their contractual rights without sufficient justification constitute an abdication of this court's responsibility to ensure that Minnesota citizens are protected from arbitrary and discriminatory legislative action.

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[1] As Justice Jackson stated in discussing the federal equal protection clause:

> I regard it as a salutary doctrine that cities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation. This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.

Railway Express Agency, Inc. v. New York, 336 U.S. 106, 112-13, 69 S.Ct. 463, 466, 93 L.Ed. 533 (1949) (Jackson, J., concurring).

Uniformity Clause

We have previously addressed what constitutes a tax. "Taxes are pecuniary charges imposed by the legislative power to raise money for public purposes—a burden imposed to supply the very lifeblood of the state." *Great Lakes Pipe Line Co. v. Commissioner of Taxation,* 272 Minn. 403, 407, 138 N.W.2d 612, 615, *appeal dismissed,* 384 U.S. 718, 86 S.Ct. 1886, 16 L.Ed.2d 881 (1965), *quoting In re Petition of S.R.A., Inc.,* 213 Minn. 487, 488, 7 N.W.2d 484, 485 (1942). "In a general sense, [a tax is] any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name." Black's Law Dictionary 1307 (rev. 5th ed. 1979); *see also Staub v. Harris,* 626 F.2d 275, 278 (3d Cir.1980).

The 2% withholding provision is a tax. It is an enforced contribution, exacted pursuant to legislative authority, and collected from public employees to address the general budget crisis facing the state. The form of the payment is not as important as is its substance. State employees are forced to pay 2% of their gross income to the state while non-public employees are not.

The majority and the district court emphasize several characteristics of the form and nature of the contribution and conclude that it is not, in fact, a tax. They stress that each contribution is credited to an individual account, that the money is refunded if the employee leaves public service (though only prior to vesting), and that the contribution is recouped in the form of retirement benefits. These justifications are either erroneous or irrelevant. Retirement benefits were not increased. The end benefits remained the same after the contribution as they did without it. Thus, the finding of the district court that the contribution inures to the benefit of the employee is clearly erroneous.[2] While it is true that a favorable IRS ruling allowing an employee to deduct the state tax from the gross income is beneficial, some funds already had such a privilege prior to the passage of the new tax.

Further, the claim that the contribution is necessary to ensure the integrity of the pension fund and, therefore, of direct benefit to the employees is not persuasive. There is no evidence in the record that, prior to the contribution, the fund was in a less-than-adequate financial position. The district court, in its findings of facts, found that the fund was in a "reasonably good financial condition." The Legislative Commission on Pensions and Retirement,[3] in its report to the 1979-1980 Minnesota State Legislature, came to the same conclusion. To the extent that the fund is compromised, it is the result of the companion decrease in the state's contributions to the fund. The legislature enacted both provisions in the same bill to combat the same problem—the state's budget crisis. One cannot be reviewed without consideration of the other.

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[2] The majority cites *Gossman v. State Employees Retirement System*, 177 Neb. 326, 129 N.W.2d 97 (1964), for the proposition that pension contributions are distinguished from taxes. In *Gossman*, the Nebraska Supreme Court considered the constitutionality of a state employee retirement system at the time of its creation. The court held that a 1 percent contribution by current employees to fund a prior service benefit fund was not a tax. The court, however, focused on the fact that the contribution was a voluntary one, arising from the acceptance of employment. Further, the contribution was for the purpose of providing benefits under the pension plan and was "not an exaction or tax *for the purposes of carrying on the general functions of government." Id.* at 332, 129 N.W.2d at 102 (emphasis added).

In the instant case, the contribution did not result in the creation or maintenance of any retirement benefits. It was intended to replace funds no longer contributed by the state, such funds being diverted to the state's general fund for the purpose of alleviating the general budget deficit.

In light of our obligation to review statutes as a whole and to pierce form to evaluate the substance of legislation, I can only conclude that state employees received no greater benefit than did the public at large from the pension fund contributions. If *all* taxpayers were required to contribute an extra 2% of their income to the state coffers, no one would dispute that the contribution would constitute a tax. If a bird looks like a duck, quacks like a duck, and walks like a duck, it is most likely a duck. Likewise, if an act looks like a tax, raises revenue like a tax, and is mandatory like a tax, it is a tax.

The great majority of our citizens pay into the federal social security fund. Congress has mandated coverage for most workers. The payments are made to the federal government in the form of payroll deductions. Historically, these deductions have been referred to as "payroll taxes." One need only pick up recent newspaper and magazine articles addressing recent amendments to that act and read the pros and cons of increasing the *taxes* to make the system solvent to conclude that the contributions are indeed taxes. Those taxes are dedicated for the specific purposes set forth in the Social Security Act. Minnesota has road users, motor vehicle, and gasoline taxes. These funds are also dedicated for specific state highway funding purposes, but are they any less a tax? To ask the question, it seems to me, is to answer it. Of course they are taxes and so is the levy the legislature has made on state employees in the act before us.

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[3] The Legislative Commission on Pensions and Retirement was originally established as an interim commission by the 1955 Legislature. Its purpose was to study public retirement problems in light of changes made by the 1955 Legislature. The commission was maintained as an interim commission by each successive legislature, with the exception of the 1961 session, until 1967. The 1967 Legislature established the current permanent commission, which has issued reports to each legislature up to the present.

Concluding that the contribution constitutes a tax, I now subject the provisions to the standards of judging constitutionality in light of the state uniformity clause. In interpreting our state uniformity clause, we are not bound by federal court interpretation of the federal equal protection clause. Because I conclude that the statute fails to pass constitutional muster under the independent state basis mandated by our state uniformity clause, I do not address whether it would pass the "rational basis" test under the federal equal protection clause.

The first step in analyzing any statute under the uniformity clause "rational basis" standard is identifying the purpose the statute was intended to fulfill. Here we have both the expressed purpose to solve the state's budget crisis, contained in the statute itself, and a purpose argued by the state's attorneys that the 2% contribution is necessary to ensure the integrity of the pension fund because of the 4% cut in employer contribution.

No single approach has been followed by courts in identifying the appropriate purpose to apply in constitutional analysis. *See* Leedes, *The Rationality Requirement of the Equal Protection Clause,* 42 Ohio St.L.J. 639, 642-47 (1981). The United States Supreme Court has taken several different approaches, including hypothesizing any potential purpose, whether or not expressed by the legislature or the state's advocates, *see United States R.R. Retirement Bd. v. Fritz,* 449 U.S. 166, 101 S.Ct. 453, 66 L.Ed.2d 368 (1980), and requiring that a deliberate choice of purpose be expressly stated in the legislation itself or actually discernible from legislative history, *see Schweiger v. Wilson,* 450 U.S. 221, 101 S.Ct. 1074, 67 L.Ed2d 186 (1981). Between these two extremes is an approach that looks for something less than express statements, but falls short of out-and-out speculation. In the instant case, we have two conflicting purposes—an express purpose stated in the legislation itself and one advocated by the state's attorneys.

I cannot accept the integrity of the fund as the proper purpose for analysis under the state uniformity clause. The entire statute must be examined, not any one provision in isolation. The legislature cannot create a purpose by one portion of the statute and then use the need created thereby to justify another portion, at least when the secondary portion impinges on the constitutional rights of state citizens.

The applicable purpose is the one expressly stated in the legislation, that is, the need to balance the state budget as opposed to the "need" to shore up the pension fund. The preamble to the act clearly states the purpose of the legislation. The fact that the legislature was in special session, called for the specific purpose of addressing the budget deficit, reinforces a narrow interpretation of the purpose for constitutional analysis. Finally, to adopt any other purpose would be to elevate form over substance and ignore the actual effect of the legislation.

The majority, in effect, consolidates multiple purposes. It does so in two ways. First, it says that the adverse impact on the pension fund caused by the deprivation of employers' contributions will affect the state's credit rating which will, in turn, exacerbate the state's fiscal crisis by affecting the state's ability to borrow. Second, the majority argues that the reduction in employer contributions threatened the soundness of the fund, thereby requiring that the legislature act to protect the fund.

Neither argument is sufficient. Although no one can deny the importance to the state of a good credit rating, the 6-month decrease in employer contributions is merely one of the numerous factors threatening the rating and the equally numerous measures being pursued to protect it. The majority's argument is simply too attenuated to bring the increase in employee contributions within the ambit of the legislative purpose outlined in the bill's preamble.

The second argument is superficially more persuasive, but also fails to withstand scrutiny. To begin with, there is something facile and dangerous in saying that creating a problem gives one carte blanche in resolving it, particularly where there is insufficient proof that the problem exists in the first place. True, there is evidence that the decrease in employers' contributions may somewhat postpone full funding of the pension system. There is also evidence, however, that full funding is not, under any circumstances, envisoned during this century. When the state's pension system was reformed in 1957, Act of April 29, 1957, ch. 935, 1957 Minn.Laws 1472, the target date for full funding was 1997. This date was pushed back to 2009 by the 1979 Legisature, Act of May 24, 1979, ch. 184, § 1, 1979 Minn.Laws 283, 285 (codified at Minn.Stat. § 356.215, subd. 4 (1982), and a procedure was adopted for revising the target date in light of changed circumstances in the future, *see* Legislative Commission on Pensions and Retirement, Report to the 1979-1980 Minnesota State Legislature at 6 (1979-1980). Nowhere are there signs of an imminent collapse of the system.

The majority repeatedly refers to the magnitude of the state's economic crisis and the need for swift solutions. This may explain the legislature's action; it does not remove the taint of unconstitutionality. The constitutional entitlemen to uniform treatment cannot be subverted in pursuit of credit ratings and quick fixes. Here, the money that is levied by the state can be traced directly to the general revenue fund. The statute states clearly that, in some pension plans, the state is withholding its contributions while, in others, the proceeds of the additional employee levies are to be paid directly to that fund.[4] State employees are thus contributing millions to the state revenue fund to help balance the budget.

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[4] Moreover, the distinction between not putting money into the pension plan and taking money out is an elevation of form above substance. Both are deprivations of contributions to the fund. An analogy can be drawn to the concept of tax expenditures. It has been clear for some time that, despite superficial differences, direct government subsidies and tax preferences (deductions and credits) are substantively the same. Not taking money from taxpayers is the functional equivalent of giving money to taxpayers. The former is an indirect tax "expenditure" while the latter is merely a more direct expenditure. *See* Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures,* 83 Harv.L.Rev. 705 (1970). Here, we are faced with the converse situation—not giving money to employee pension plans is functionally equivalent to taking money from the plans.

It has been argued that, since the legislature has the power to decrease employer contributions currently, it also has the power to raise employee contributions at sometime in the future to maintain the financial integrity of the pension funds. Taking both steps in the same act must, therefore, be permissible. This argument fails for two reasons. First, it is far from clear that the legislature may unilaterally decrease employer contributions. The contract clause discussion that follows in this dissent indicates that such an act would violate the state constitutional provision proscribing impairment of contract.

Second, even assuming that a decrease in employer contributions would not violate the contract clause, a subsequent increase in employee contributions would still run afoul of the uniformity clause. A delay in imposing a tax on public employees does not render the levy any less a tax. If the classification fails to address the purpose of the legislation, it fails constitutional muster whether enacted today or 2 years from now. The applicable purpose remains the curing of the state's financial crisis. Funds previously incorporated into the general revenue fund through the decrease in employer contributions are merely replaced by subsequent employee contributions. The substance remains the same, though the form is manipulated to avoid constitutional barriers.

Any law passed by the legislature that imposes a tax on citizens of this state must pass the two-step uniformity clause test of a legitimate purpose and a classification rationally related to that purpose. Here, the test is not met because the classification consisting of state employees does not rationally relate to the purpose of curing the state's financial crisis.

The state admitted at oral argument that if the legislature had attempted to solve the entire $312 million shortfall by the levying of an increase in employee contributions to pension plans, it perhaps would have been illegal. If that is so, how can the $63 million be any less legal? On what theory would the larger levy be illegal and the smaller not?[5]

To me, nothing can be clearer than that the levy is a tax, a tax devoted to the general welfare of the entire citizenry of the State of Minnesota. If we uphold this scheme, what is to prevent the legislature from levying a special tax on steel workers only to help alleviate certain economic conditions on Minnesota's Iron Range, on farm families to alleviate problems on the farms, or on other industrywide workers to help or maintain industries in the State of Minnesota? I can see no distinction.

I conclude that the act violates the state uniformity clause and the district court must be reversed.

Contract Clause

I would also hold that contract rights existed between the state and its employees and therefore disagree with the majority's finding that no contract, express or implied, governed the levels of employee contributions. Since the 1950's, the legislature has made it clear by a series of actions that it intended to guarantee that public pension funds would be actuarily sound and able to pay certain benefits. When it found those funds not sound, it increased contributions not only on the part of the employees, but the employers as well.[6] As a matter of fact, from 1959 until 1973, it imposed a special 2½ percent levy on local political subdivisions, in addition to the normal employer-employee contributions, until pre-existing fund deficits were eliminated. *See* Act of May 24, 1973, ch. 753, § 85, 1973 Minn.Laws 2266, 2308,

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[5] Subsequent to the instant action, the 1983 Legislature amended the contribution provisions by requiring reimbursement to state employees of half the increased contributions, payable with interest at the time of the first annuity payment or upon withdrawal. *See* Act of June 8, 1983, ch. 301, §§ 225-26, 1983 Minn. Laws 1706, 1855-56. The new provisions are applicable from January 1, 1983, to June 30, 1985, and affect employees retiring during this period and participants whose contributions were increased by the legislation challenged here. While this recent enactment does lessen the impact of the original contribution provisions, it does not cure the taint of unconstitutionality.

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[6] Since the current scheme of the state's pension system was established in 1957, employer contributions have matched employee contributions. In the 1957 legislation, employee contributions were set at 6 percent. Employer contributions were gradually raised over a 2-year period until they too reached 6 percent. Act of April 29, 1957, ch. 935, § 7, 1957 Minn. Laws 1472, 1475. In 1973, when employeecontributions were again increased and basic and coordinated plans were differentiated, the statute was amended to provide that employer contributions would be equal to those of employees. Act of May 24, 1973, ch. 753, § 28, 1973 Minn. Laws 2266, 2279. The express policy of the new pension system was to guarantee the financial integrity of the various pension funds by matching current employer contributions to employee contributions and by providing for adequate future financing. Legislative Committee on Retirement and Pensions, Report to the 1979-1980 Minnesota State Legislature, at 26-27 (1979-1980).

The exceptions to the policy of lock-step contribution increases noted in the majority opinion are not significant. The 1974 amendments to the Teachers Retirement Association levels of contributions consisted of a temporary ½ percent difference enacted along with significant alterations to the operation of the fund itself, The contribution levels for correctional employee members of the state retirement system merely reflect the unique status of these employees pursuant to Minn.Stat. § 352.90 (1982), which provides special retirement benefits due to the potential for early retirement caused by the nature of the employment.

repealing Minn.Stat. § 353.27, subd. 5 (1971).[7] Increases in contributions since the 1950's have been, in every instance, accompanied by increases in benefits.[8] It is beyond belief that, in 1983, we would find there is no guarantee that the state will continue to match the employee contribution in at least the amounts heretofore made in the past.

For the same reasons, I take strong exception to the majority opinion finding no intent to promise specific levels of state contributions or pensions. For, as we held in *Sylvestre v. State,* 298 Minn. 142, 214 N.W.2d 658 (1973), insofar as it affected the judiciary, a sound pension system is one of the few inducements for public employment. *Id.* at 149, 214 N.W.2d at 663. It is similar to a deferred compensation plan where the state offers a pension in addition to the regular salary if a public employee works for a specified period of years. For the most part, state employees are paid far less than either their federal counterparts or those in private employment for similar work. There will be a shock wave felt throughout the state if public employees are now told, in effect, that never mind what your salary was or what your pension estimates were at the time you came to work 10 years ago, these can be changed anytime.[9] Such a holding simply does not square with today's reality nor is such a holding even consistent, in my opinion, with our recent decision in *Christensen v. Minneapolis Municipal Employees Retirement Board,* 331 N.W.2d 740 (Minn. 1983).[10]

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[7] The repealed section, originally enacted by the 1957 Legislature, provided:

> An additional contribution shall be made to the fund based on two and one-half percent of the salary of each member not to exceed $4,800 in any calendar year for the purpose of amortizing the deficit in the fund. This contribution shall be made from funds available to the employing subdivision in the manner provided in section 353.28. This subdivision takes effect July 1, 1959.

Minn.Stat. § 353.27, subd. 5 (1957).

[8] The 1979 amendments to the Teachers Retirement Association pension plan, Act of May 31, 1979, ch. 293, § 10, 1979 Minn.Laws 641, 648-49, noted as an exception to this overriding policy in the majority opinion, did contain an $11,600,000 appropriation to fund post-retirement adjustments, *id.*, and increased both employer and employee contributions by an identical ½ percent, *see* Legislative Committee on Retirement and Pensions, Report to the 1979-(1980) Minnesota State Legislature, at 6 (1979-1980).

The legislature considered also a 2% across-the-board decrease in salaries, we are told. Undoubtedly, there was fear that if that course of action were taken, it would be violative of the impairment of contract clauses of the state and federal constitutionals because the state had entered into a collective bargaining agreement and the legislature had ratified a contract with state employees that prohibited a cut for the period of that contract. A fiscal crisis that fails to justify a direct impairment of contract, however, cannot then be held to justify the same impairment, though accomplished in a circuitous manner.

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[9] The majority correctly points out that the University of Minnesota faculty and other state employees were left out of the 2% levy. It attempts to justify the omission by inherent powers given the University Board of Regents. I cannot follow that logic. Whether one works for the State of Minnesota or one of its political subdivisions, if one employee must pay the 2% contribution, all should pay, or in my opinion, there is a denial of equal protection under both federal and state constitutions. Because the autonomy of the Board of Regents is created by state constitutional provisions, and analysis of these provisions here would involve us in additional constitutional analysis, I do not reach this issue here. The tax and contract analyses are dispositive of this appeal and further discussion of this issue is unnecessary.

[10] In *Christensen,* this court recognized a cause of action grounded in promissory estoppel to challenge deprivation of pension benefits and other changes in pension terms and conditions. The majority opinion rejects this claim here and endorses the district court's finding that, due to numerous modifications of contributions and appropriations in the past, any employee expectation in fixed contribution rates is unreasonable. This logic ignores the fact that the clear pattern of the modifications made by the legislature is one of increasing benefits and matching employer contributions. The modification in dispute in the instant case is drastically different in that employee contributions were raised and employer contributions lowered. There may be no reasonable expectation in fixed rates. There may be, however, a reasonable expectation in matching contributions and continued maintenance of benefits as well as salary.

The state emphasizes horror stories of possible layoffs in the tens of thousands in an apparent attempt to show that, even if the statute impaired contract rights, such an impairment was justified by the seriousness of the state's fiscal crisis. The state's scenario, however, envisions solving the entire $312 million shortage through layoffs and does not limit itself to the $63 million initially taxed to state employees. The consequences of solving only $63 milllion of the shortage through layoffs are obviously far less serious and do not justify the state's impairment of its employees' contract rights. Further, the legislature did not sufficiently consider other fiscal relief measures before it resorted to the expedient of tampering with the pension fund. There is no indication that the sought-after $63.5 million was obtainable nowhere else than from public employees' pockets.

Perhaps there is some validiy to the argument that the legislature felt state employees ought to share in the cost of the solutions to the state's financial crisis. In my opinion, however, the legislature has passed far over the line on what is permissible and what is not in enacting this statute. Other jurisdictions have held that increases in public employee pension contributions without counterbalancing increased benefit to the employee constitute impairments of contract rights. *Allen v. City of Long Beach,* 45 Cal.2d 128, 287

P.2d 765 (1955); *Marvel v. Dannemann*, 490 F.Supp. 170 (D.Del.1980); *Singer v. City of Topeka*, 227 Kan. 356, 607 P.2d 467 (1980); *Opinion of the Justices*, 364 Mass. 847, 303 N.E.2d 320 (1973). California recently held that a decrease in employer contributions to a public pension reserve fund was an unconstitutional impairment of contract. *Valdes v. Cory*, 139 Cal.App.3d 773, 189 Cal.Rptr. 212 (1983).

I conclude that the doctrine of promissory estoppel creates actionable contract rights in public employees as to the state pension fund. By decreasing employer contributions and increasing employee contributions, the legislature has substantially impaired its contract with state employees, an impairment not justified by the extent of the financial crisis the legislature acted to cure.

Under the circumstances of this case, I must conclude that the legislature has failed to act in a constitutional manner. Thus, I must dissent from the majority opinion. To do otherwise appears to me to be nothing less than abolishing the historical protection afforded by our constitutions and to say, in effect, taxpayers beware because there is no longer a limit on legislative authority to classify and to tax or to rewrite state contracts at will. In this case, state employees are the victims; tomorrow, anyone else could be.

SCOTT, Justice (dissenting).

I join in the dissent of Justice YETKA.

WAHL, Justice (dissenting).

I join in the dissent of Justice YETKA.

KELLEY, Justice (dissenting).

I respectfully dissent. I concur with the majority that appellants have failed to establish an express or implied contract. The three-judge panel made findings that the state made no promises regarding guaranteed levels of employee contributions to the pension funds and that appellants have failed to establish that they reasonably and detrimentally relied upon any express or implied promises made by the state. While perhaps different findings could have been made, as Justice Yetka points out in his dissent, I conclude the panel's findings on the contract issues were not clearly erroneous. I further concur that the enactment of the "Act" by the legislature was not an unfair labor practice under PELRA.

However, because I cannot escape the conclusion that the mandatory 2% withholding provision is a tax, and, as such, that it violates the state uniformity clause, Minn. Const. art. X, § 1, I join the dissent of Justice Yetka and would reverse on that ground only.

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

AFSCME Councils 6, 14, 65 and 96, AFL-CIO,
Plaintiffs,

vs.

Barbara L. Sundquist, Commissioner of Employee Relations; Allen Rudell, Commissioner of Finance; and the State of Minnesota,
Defendants,

and

The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; The Minnesota Police and Peace Officers Association; the Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; Minnesota Police Pension Council; Minnesota Education Association; Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320; St. Paul Police and Firefighters Relief Associations,
Intervenors,

and

International Union of Operating Engineers, Local 49 and LELS, Inc.,
Amicus Curiae.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
ORDER FOR JUDGMENT

File No. 460448

Appearances:

Gregg M. Corwin for AFSCME unions;

Joseph T. O'Neill, for St. Paul Police and Firefighters Relief Association;

Eric R. Miller for Minnesota Education Association;
Jeffrey W. Jacobs for Teamsters Local No. 320;
Roger A. Peterson for Minneapolis Police Relief Association, Minneapolis Fire Department Relief Association, Minnesota Federation of Teachers, AFL-CIO, Minnesota Police and Peace Officers Association, Minneapolis Employees Retirement Board, Minnesota Professional Firefighters Association, AFL-CIO, Duluth Police Pension Association, Duluth Police Union, AFL-CIO, Police Officers Federation of Minneapolis Retired Police Association, Rochester Police Relief Association, Minnesota Police Pension Council;

Richard B. Allyn for Barbara L. Sundquist, Commissioner of Employee Relations, Allen Rudell, Commission of Finance, and the State of Minnesota;

William O'Brien, for LELS, Local 49, by brief amicus curiae.

A trial on the merits was conducted on January 6, 7, 10, 11 and 12, 1983.

Based upon all of the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

I.

The Third Special Session of 1982 of the Minnesota State Legislature was convened in early December, 1982, to act in response to an economic emergency created by a projected $312.5 million budget deficit.

II.

On December 10, 1982, at the conclusion of the Third Special Session of the year, the Legislature enacted a bill subsequently enrolled as "Laws of Minnesota, 1982, Third Special Session, Chapter 1" (the Bill). The Bill was signed by the Honorable Albert H. Quie, Governor of the State of Minnesota, on December 13, 1982.

III.

The purpose of the Bill was to meet the grave economic emergency confronting the State of Minnesota (the state) by bringing the budget into balance for the current biennium without jeopardizing the financial integrity of the state.

IV.

The Legislature was required to act without extensive committee hearings, without the benefit of agency studies and reports, and without its usual opportunity to deliberate because of time limitations required to be imposed by the executive branch of government. The only alternative to prompt legislative action was the executive's use of the "unallotment" process with its drastic economic and social dislocations which the Legislature was seeking to avoid.

V.

In order to resolve the budget problem in a manner that would permit its passage by the Legislature and its approval by the Governor, the Bill contains a combination of tax increases, spending reductions and budget shifts.

VI.

The Bill contains the following provisions directly affecting public employees:

a. A reduction, for a period of six months, in employer contributions to those pension funds where the state is the employer for pension purposes, amounting to 4 percent of the salary or other base figure used to calculate employer contributions.

b. For the pension funds in which the state does not make the employer contributions directly, a six-month "pick-up" of employer contributions for the state's general fund amounting to 4 percent of salary or other base figure used to calculate contributions.

c. An increase, for a period of one year, in employee contributions to pension funds amounting to 2 percent of salary or other base figure used to calculate the employee contributions.

d. A provision designed to secure from the Internal Revenue Service a ruling permanently exempting the entire employee pension fund contributions from current federal taxable income.

e. During the first six months of 1983, state employees will continue to accrue most fringe benefits if on voluntary unpaid leave of absence.

f. The various pension funds are insured by a fund created by the legislature against loss of contributions and investment income.

g. Two public employee representatives are to be appointed to the Investment Advisory Council.

VII.

The pleadings and proof herein raise constitutional issues with respect to the provisions for a 2 percent increase in the employee contribution to the pension funds and the statutory issue of an unfair labor practice as to the provisions for increased employee contributions and continued fringe benefits for state employees on unpaid leave of absence. No issue is raised with respect to the other provisions of the Bill.

VIII.

Plaintiffs' collective bargaining agreements contain no express provisions with respect to pension contributions, pension benefits or take-home pay. All witnesses involved in the negotiating process testified that they understood that the law prohibited them from negotiating about retirement contributions or benefits, and that they only negotiated gross salary levels. The 2 percent increase in employee pension contribution does not reduce the gross salary of public employees.

IX.

Those collective bargaining agreements admitted into evidence contain express provisions declaring the parties' intent that the written agreement is to be the complete agreement of the parties with respect to all terms and conditions of employment, contain provisions reserving the employer's right to modify, establish or eliminate any terms of employment not specifically covered by the agreement, and contain provisions recognizing that if there is a conflict between the agreement and a statute, the statute wil control.

X.

Neither the collective bargaining agreements between the various groups of public employees and their employers nor the pension fund statutes purport to give any contract rights in the maintenance of employee pension contributions at any fixed level and such rights cannot reasonably be inferred. In fact, the statute expressly negates such an interpretation. The continuing contract rights of elementary and secondary teachers do not preclude a 2 percent increase in employee contributions to the pension funds.

XI.

Neither the collective bargaining agreements nor the pension fund statutes provide any basis for a reasonable reliance that employee pension fund contributions will be maintained at a fixed level.

XII.

Historically, public employee pension contributions have been set by statute and these levels have changed and have varied as between funds because of differences in the financial condition of the funds, the changing of benefit levels, and general budget considerations. No established past practice or course of dealing to the contrary has been shown.

XIII.

The Local Police and Firefighters employee contributions to their relief associations, and the benefits derived therefrom, are calculated upon a percentage of a maximum patrolman's and a first grade firefighter's salary, respectively. The formula for paying police and firefighter pensions and contributions to pension funds is not changed by the Bill and will continue to be a fixed percentage of the maximum patrolman and firefighter salaries.

XIV.

The Bill does not reduce the gross salaries of patrolmen or first grade firefighters for any reason or purpose other than federal income tax purposes, and the pension benefits for retired and disabled members of the Local Police and Firefighters Relief Associations and their widows are not affected by the Bill.

XV.

The Bill was not intended to make, and may reasonably be construed as not making, any changes in the benefit levels or rights of the employees under the terms of the various pension plans.

XVI.

Public employees receive benefits from their contributions to public employee pension funds that are not received by non-public employees or the public generally. Public employees have an interest beyond that of the public generally in the maintenance of the financial integrity of the state in that the state is the source, in whole or in part, of income during their working days and of their pensions after retirement. There was a rational basis for distinguishing between public employees and the public generally, particularly in the matter of public pensions.

XVII.

Prior to passage of the Bill, the public employee pension funds were in a reasonably good financial condition. The 4 percent reduction in employer contribution would result in depleting the assets of the pension funds to the extent of $63.7 million. The increased 2 percent employee contribution was designed and intended to avoid this depletion and thereby assure the continued actuarial soundness of the funds.

XVIII.

The actuarial soundness of public employee pension funds is a factor considered in assessing the financial condition of the state for the purpose of establishing the state's bond rating and is thus a factor in the maintenance of the state's financial integrity. The increased employee contributions to the pension fund has a significant relation to the stated purpose of the Bill.

XIX.

The increased employee contribution of 2 percent is not a tax but is, as designated, a contribution to the funds from which public employees' pensions are and will be paid.

XX.

There was no evidence from which it could be inferred that the Legislature acted to increase the benefits of employees on unpaid leave of absence for any reason other than to encourage unpaid leaves of absence as an economy measure by providing for maintenance of fringe benefits to the benefit of the employees.

And from the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

I.

There is no contractual or property interest in the maintenance of public employee pension contributions at any fixed level, at any fixed ratio to employer contributions, or at any fixed relationship to benefit levels arising out of the collective bargaining agreements, the teachers continuing contracts law, or the pension statutes of this state.

II.

The increase in employee pension contributions provided for in the Bill does not constitute an unfair labor practice under the laws of this state.

III.

The increased benefits granted employees electing to take unpaid leaves of absence provided for in the Bill does not constitute an unfair labor practice.

IV.

Plaintiffs are not entitled to a declaratory judgment of this Court declaring that the 2 percent increased employee contribution provision of Laws of Minnesota, 1982, Third Special Session, Chapter 1, is invalid by reason of the impairment of contract, equal protection, or due process clauses of the United States Constitution or of the uniformity of taxation clause of the Minnesota Constitution.

V.

Plaintiffs are not entitled to a declaratory judgment of this Court declaring that the 2 percent provision referred to in Paragraph IV, supra, or the provision in the same legislation relating to increased benefits of employees on voluntary leaves of absence, constitute an unfair labor practice within the meaning of the Minnesota Public Employment Labor Relations Act.

VI.

Plaintiffs are not entitled to a permanent injunction restraining Defendants from enforcing or implementing the legislation referred to in Paragraph IV, supra.

ORDER

A judgment of dismissal in favor of Defendants shall be entered herein. The attached Memorandum is made a part hereof.

BY THE COURT:

/s/ ARCHIE L. GINGOLD
Judge of District Court*
/s/ GORDON L. McRAE
Judge of District Court*
/s/ BRUCE C. STONE
Judge of District Court*

Dated: January 21st, 1983

*Retired Judges serving pursuant to the December 20, 1982 order of the Minnesota Supreme Court.

MEMORANDUM

In early December of 1982, the Minnesota State Legislature (the Legislature) met in its Third Special Session (the Session) for the purpose of coping with the latest in a series of financial crises facing the state of Minnesota (the state). The first of this series of financial crises occurred during July of 1980 when the state faced an anticipated shortfall of some $198 million. This expected deficit was dealt with by a series of budgetary cuts. The state again was in financial trouble during the spring of 1981 when a shortfall of some $112 million was anticipated. The solution at that time was essentially to roll this amount forward into the next biennium. Thus, in June, 1981, a shortfall of approximately $502 million confronted the state. At this time several tax increases were enacted by the Legislature to cover that deficit. Shortly thereafter, in November, 1981, the projected shortfall was $768 million. This shortfall was met with a combination of tax increases, budgetary reductions and shifts by the Legislature. Again in March, 1982, the state faced an anticipated shortfall of $229 million to which the Legislature applied further tax increases, budget cuts and shifts.

This brings us to the latest in this series of financial crises. On November 18, 1982, word of still another anticipated shortfall, some $312 million, reached the state Commissioner of Finance. To compound the crises, homestead payments to local governments in excess of $1 billion were due to be paid by the state in mid-December. In addition, beginning in February, 1983, an impoundment schedule mandated by law that certain amounts of state funds be impounded to pay the state's short-term debt.

In response to the state's sixth fiscal crisis in two-and-a-half years, Governor Albert H. Quie (the Governor) met with legislative leaders to discuss various options to balance the budget. Eventually, the 1982 Third Special Session of the Legislature was called.

On December 10, 1982, the Legislature enacted H.F. No. 4, 1982 3rd Spec. Sess. Ch. 1 (the Bill) which was signed into law by the Governor on December 13, 1982.

The Legislature was faced with a difficult task. They had to quickly arrive at some consensus on legislation to remedy the state's latest economic woes, otherwise the Governor was preparing to take the only action available to him as the state's Chief Executive: unallotment. Unallotment means cancelling the authority to spend previously appropriated funds. Minn. Stat. §16A.15 provides that the Commissioner of Finance must unallot appropriated funds when the expected revenues are insufficient to meet the state's expenses.

The possible consequences to government services if this unallotment process had been used are set forth in detail in Defendants' Exhibit 15. It is sufficient for our purposes that the effects of such a drastic reduction of appropriations would be disastrous to various state and local governmental services. Public employees were to bear a disproportionate share of the state's fiscal crisis through layoffs.

The Governor informed the Legislature that he was prepared to initiate this unallotment process on December 15, 1982 (the date homestead payment were scheduled to go out to local governments) unless the Legislature acted before then. In addition to this time constraint, the Legislature had to develop a solution that was palatable not only to the Legislature but also to the Governor.

It was within this political and fiscal environment that the Legislature had to formulate a remedy. In its Preamble (Article I), the Bill states that Minnesota faced a "grave economic emergency" and that "the legislation designed to correct this economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government."

With these precepts and under severe time and financial constraints, the Legislature put together a package of tax increases, budget cuts and shifts.

The Bill increased the state sales tax from 5 to 6 percent (Article VI) and increased the income tax by 3 percent (Article V). These additional taxes, taken with all of the tax increases since July of 1980, amount to a not-so-grand total of approximately $1,223,000,000 in additional taxes.

To avoid placing an oppressive tax burden on the taxpayers, the Legislature combined these tax increases with spending cuts, shifts and provisions regarding public employee pension contributions (the latter of which are under attack here). Pertinent to our discussion are those portions of the Bill which require that beginning with the first full pay period after December 28, 1982, various state, county and municipal employees pay an additional 2 percent of their salaries into their respective pension funds. These increased pension contributions are to end with the last pay period before January 1, 1984. The Bill also requires that beginning with the first full pay period after December 28, 1982, upon each credit of employer contributions to the respective funds, a portion equal to 4 percent of salary is to be paid from the respective pension funds to the state treasury and credited to the general fund of the state. These payments are scheduled to end with the last full pay period before July 1, 1983. The Bill then creates a special fund to reimburse the pension funds for any differences between the 4 percent employer contributions paid to the state treasury and the increased contributions by employees. The special fund is also to reimburse the pension funds for any interest lost if the reduced employer contributions are not matched by the increased employee contributions.

Also at issue in this case are those provisions in Article II, Sec. 8 of the Bill concerning unpaid leaves of absences.

Shortly after the Bill became law, various plaintiffs, representing state, county and municipal employees affected by the above provisions of the Bill, petitioned the Minnesota Supreme Court for a Writ of Quo Warranto. On December 20, 1982, the Minnesota Supreme Court, by Chief Justice Douglas K. Amdahl, referred and transferred all of these matters and motions to this Court for expedited hearing and determination.

On December 30, 1982, this Court denied plaintiffs' motion for a temporary injunction and set the matter for expedited hearing on January 6, 1983.

At trial plaintiffs allege:

1. That the Bill is an unlawful impairment of contract prohibited by U.S. Const. art. I, sec. 10 and Minn. Const. art. I, sec. 2.

2. That the Bill violates guarantees of equal protection set forth in U.S. Const. amend. XIV, sec. 1 and Minn. Const. art. X, sec. 1.

3. That the Bill deprives plaintiffs of a property right without due process of law as guaranteed by U.S. Const. amend. XIV, sec. 2 and Minn. Const. art. I, sec. 7.

4. That the Bill violates the Public Employment Labor Relations Act (PELRA) thus constituting an unfair labor practice.

Plaintiffs seek a declaratory judgment prohibiting the implementation of the Bill as it relates to a 2 percent increase in public employee retirement contributions and unpaid leaves of absence. The other components of the Bill are not the subject of this lawsuit and their legality has been conceded by the parties for purposes of this action.

I.

IMPAIRMENT OF CONTRACTS

A. *Contracts Arising out of Pension Statute.*

Both the U.S. Const. art. I, sec. 10 and the Minn. Const. art. I, sec. 2, prohibit the passing of any "law impairing the obligation of contracts." It is the plaintiffs' position that the Bill impairs the contractual rights between public employees and their pension funds arising out of the pension statutes; impairs the "continuing contract" rights of elementary and secondary teachers under Minn. Stat. §125.12 and §125.17; and alters the terms and conditions of employment contained in the collective bargaining agreements.

If plaintiffs' contract clause claim is to be sucessful, they must first demonstrate the existence of the contractual expectations that have allegedly been impaired. Inasmuch as we are dealing here with the question of whether or not contractual rights exist between public employees and their pension funds in the maintenance of employee retirement contributions at any fixed level, it is not necessary to pass on the existence of contract rights in retirement benefits, vested or unvested pensions, etc. The Legislature has taken no action which affects benefit levels for retirees or the benefits that will be received by employees with the required service time and age. The only issue here is whether contributors have a contractual right to a fixed contribution level.

The Court is guided in this respect by the Minnesota Supreme Court's practice of "not decid[ing] constitutional questions except when necessary to do so in order to dispose of the case at bar". State v. Hoyt, 304 N.W.2d 884 (Minn. 1981).

Accordingly, the first issue this Court must address is whether or not contractual rights exist in maintaining fixed levels of retirement contributions.

Plaintiffs first rely upon *Sylvestre v. State of Minnesota,* 298 Minn. 142, 214 N.W.2d 658 (1973) and *Sandell v. St. Paul Police Relief Association,* 306 Minn. 262, 236 N.W.2d 170 (1975) to establish the existence of a contractual right in the maintenance of a fixed level of employee pension contributions. Both of the cases are distinguishable from the facts under consideration here. *Sylvestre* dealt with a class, unique in its constitutional protection, and also dealt with a reduction in pension benefits rather than, as here, a change in employee contribution levels. *Sandell* is distinguishable in that it involved the right of terminating employees to recover their contributions rather than an increase in employee contributions. In fact, *Sandel* held that there was no contract right to recovery of contributions.

Plaintiffs have also relied on a number of court decisions from other jurisdictions to support their claim that the pension statutes in effect before the new Bill was enacted created enforceable contract or property rights to the maintenance of fixed retirement contribution levels. However, those cases finding a contractual obligation not to modify the contribution levels without the consent of public employees or without a showing that the modification was absolutely necessary to preserve the soundness of the funds are not on point. In none of those jurisdictions were there specific statutory provisions declaring that the Legislature, by establishing and maintaining a pension plan did *not* intend to create contractual obligations, as there are in Minnesota. For example, in Minn. Stat. §353.38 (1980) the Legislature addressed the rights of members of the Public Employees Retirement Association (PERA) by providing that:

> *Nothing* done under the terms of this chapter and acts amendatory thereof *shall create or give any contract rights to any person, except* the right to receive back upon withdrawal from the association through separation from the public service, the accumulated deductions, as by law defined, standing to his credit on the books of the association. [emphasis supplied]

Similar limiting provisions regarding the other major retirement funds may be found at Minn. Stat. §354.07, subd. 8 (1980) with respect to the Teachers Retirement Association (TRA) and Minn. Stat. §352.022 (1980) regarding the Minnesota State Retirement System (MSRS) and several other retirement systems.

In *Opinion of the Justices*, 364 Mass. 847, 303 N.E.2d

320 (1973), it is true that the Supreme Judicial Court in Massachusetts advised the legislature there that proposed legislation increasing employee contributions without a coresponding increase in benefits would presumptively be invalid. However, in that state, the legislature had specifically determined that it intended to create a contractual right to the maintenance of the level of rights and benefits in force at the time each employee enters public employment. Section 25(5) of Mass. Gen. Laws c. 32 provides:

> The provision [of the pension statutes] shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which those who are or may be retired for superannuation are entitled to contractual rights and benefits, and no amendments or alterations shall be made that will deprive any such member or any group of such members of their pension rights or benefits provided for thereunder, if such member or members have paid the stipulated contributions.

As the Local 49 Brief, pp. 6-7 points out, provisions similar to the statute in Massachusetts have been made part of the state constitutions in New York, Alaska, Hawaii, Illinois, and Michigan. If there were such a provision in the Minnesota Constitution or in the Minnesota statutes, the Bill might well constitute an unlawful contract impairment. However, since the law in Minnesota is precisely the opposite, creating no contract rights in the maintenance of the pension system in any fixed form, the cases from those jurisdictions are irrelevant here.

Plaintiffs next contend that an implied contractual relationship exists between public employees and their pension funds under Section 90 of the Second Restatement of Contracts:

> A promise which the promisor should reasonably expect to induce action or forebearance on the part of the promissee and which does induce such action or forebearance is binding if injustice can be avoided only by the enforcement of the promise . . . .

As the Massachusetts Supreme Judicial Court noted in *Opinion of the Justices, supra,* the term "contract" should be read to include the reasonable material expectations of the employees. What the Minnesota Legislature wanted to do when it enacted these statutes was to tell public employees that the pension structures were always subject to legislative modification and that they could not expect them to remain fixed.

There is no basis for the contention that, no matter what the legislature has said, what it has done is induce employee contributors to rely on the expectation that contribution levels would remain fixed. The employee contributions, the employer contributions, and the appropriations to cover unfunded liabilities have been modified on a number of occasions in the past decade. Therefore, an employee aware enough of his or her pension contribution rate to formulate some kind of reliance interest would be aware that those contribution levels have fluctuated over time. Given that history, an expectation that contribution rates would remain fixed is patently unreasonable.

Inasmuch as contract rights do not exist in the maintenance of employee pension contribution rates at any fixed level, we must accordingly conclude that no contract rights between public employees and their pension funds have been impaired by the Bill's passage.

B. *Teachers' Continuing Contract Rights.*

Teachers have a continuing contract right to the full salary which is a part of their continuing contract pursuant to Minn. Stat. §125.12, subd. 4. Since, however, the teachers' contracts contain no mention of employee contribution rates, it is difficult to perceive how the increased contribution impairs the contract. Teachers continue to receive the gross salary agreed to when they signed the contract.

Plaintiffs contend, however, that teachers are aware of the mandatory contribution required by the State under the TRA and rely on this deduction from gross salary in agreeing to accept the terms of the continuing contract. As noted above, such reliance is misplaced.

Accordingly, the contract rights of teachers, whether express or implied, were not impaired as a result of the 2 percent increase in employee contribution rates.

C. *Collective Bargaining Agreement.*

It is plaintiffs' position that the Bill alters the terms and conditions of employment contained in the collective bargaining agreements signed by the plaintiffs and their respective employers, thus unconstitutionally impairing those contracts.

We reject plaintiffs' contention for the following reasons:

(1) Minn. Stat. §179.63, subd. 18, specifically denies the right to negotiate on the subject of retirement contributions or benefits;

(2) There are no express provisions in the language of the contracts to indicate the negotiators

intended to include a fixed level of employee contributions;

(3) All witnesses charged with the responsibility of negotiating the contracts recognized that retirement matters were not a proper subject for negotiation;

(4) The 2 percent increase in contributions is a deduction from gross pay, and not a reduction in gross salary.

The fact that the state costed out the item of the state's contribution to the pension funds in considering the union's proposal, does not incorporate it as a term and condition of employment.

D. *Police Power.*

The first section of Article I of the Bill contains a "Findings and Purpose" clause. This section eloquently sets forth the plight facing the State of Minnesota. The Legislature declared the existence of a "grave economic emergency" in the State of Minnesota due to a lack of revenue. It found that, in order for the state to continue to be a viable governmental entity, immediate reductions in state expenditures had to be made and that additional mechanisms to increase state revenues be immediately adopted. *See* Article I, §1. Many suggestions were considered to accomplish the necessary reduction. The massive layoff of state and local public workers received serious consideration. This was rejected in order to avoid "undue economic or social dislocations . . (or) eliminate basic public services, (and) cause further extensive unemployment . . . ." (Article I, §1. Instead, the Legislature chose a balanced approach; appropriations to state agencies were reduced (article II), education aids were reduced (article III) and aid to local units of government were reduced (article IV). These reductions in state expenditures absorbed approximately 40 percent of the amount needed to balance the budget. The balance of the shortage was made up by increasing income taxes (article V) and sales taxes (article VI), and adjusting certain federal tax treatments (Article VII).

In *Home Building & Loan Association v. Blaisdell,* 290 U.S. 398 (1938), the Supreme Court held that all contract impairments are not necessarily unconstitutional. The Court recognized that, despite the Contract Clause, the states must be able to safeguard the vital interests of their people. Consequently, the Court ruled that contract impairments can pass constitutional muster if:

(1) the legislation in question was passed to deal with a state emergency;

(2) the legislation is designed to protect a broad societal interest, and not just the interests of a favored group;

(3) the legislation is reasonable and appropriately tailored to the emergency; and

(4) the legislation is limited to the duration of the emergency.

Each of these considerations is present here.

First, there can be little doubt that the Bill in question here was passed to deal with a pressing state emergency. The Legislature made a series of factual findings in the Bill's preamble indicating that the state is confronted with a grave economic emergency, threatening its existence as a viable governmental entity, that requires immediate reductions in state expenditures and immediate increases in state revenues. More specifically, the Legislature determined that the public pension funds could not afford an increase in its unfunded liability resulting from a substantial loss of revenue and still maintain their financial soundness. Inasmuch as the financial soundness of the pension funds is a factor considered in assessing the state's bond rating, the funds could not be removed without further impairing the state's fiscal condition which prompted the passage of the legislation.

Second, the Bill was clearly enacted to protect a broad societal interest in the health and welfare of its citizens. If the legislation had not been passed, the executive branch would have been required to proceed by unallotment in order to erase a projected $312.5 million deficit and meet the constitutional requirement of having a balanced budget at the end of the biennium. Such unallotment would have resulted in drastic cuts in funding to all state agencies and local governmental units. Such unallotment would definitely have endangered the societal interest of the citizens of Minnesota.

Third, the legislation is reasonable and is appropriately tailored to the emergency. Unallotment would necessarily result in drastic cuts in funding to public agencies. The effect of such cuts would fall almost exclusively on public employees, since 75-80% of the funds allotted to public agencies are appropriated for personnel costs. Rather than suffer massive layoffs of public employees, the legislature determined that temporarily reducing its contributions to the public employees' pension funds while still maintaining the financial integrity of the funds was an appropriate and reasonable alternative.

In considering challenges to economic and social legislation, considerable discretion and latitude must be afforded legislative choices. *Hassler v. Engberg,* 233 Minn. 487, 48 N.W.2d 343 (1951). Accordingly, courts cannot assume that legislative actions are capricious or that the legislature was not aware of facts which afforded a reasonable basis for its action. The presumption of constitutionality imposes restraint upon judicial substitution of its opinion for that of the legislature. *Fairview Hospital Ass'n. v. Public Building Service & Hospital & Institutional Employees Local 113,* 241 Minn. 523, 64 N.W.2d 16 (1954). Thus, a law may not be declared unconstitutional merely because the court believes it is bad policy or bad economics. *Head v. Special School District No. 1, supra.* This accords with the cardinal principle of statutory construction which is to save and not destroy. *See, e.g.,* Minn. Stat. §645.17(3) (1980). Consequently, even if the Court should believe that other means might have been better to accomplish the Legislature's goal, the Court instead must defer to the legislative judgment. *Fairview Hospital Ass'n. v. Public Building Service & Hospital & Institutional Employees Local 113, supra.*

Accordingly, deferring to the legislative judgment, this Court finds that the legislation in question is reasonable and appropriately tailored to the emergency within constitutional requirements.

Finally, fourth, the Bill's terms are expressly limited to the duration of the emergency. There are none of the permanent effects that afflicted the bills struck down in *Allied Structural Steel Co. v. Spannaus,* 434 U.S. 234 (1978) or *United States Trust Co. v. New Jersey,* 431 U.S. 1 (1977). This Bill will lapse on December 31, 1983, and is therefore merely a temporary measure designed to deal with the immediate emergency.

Plaintiffs further contend that the Contract Clause cannot be overriden by use of the police power unless the state can show that other alternatives which would not violate other constitutional guarantees were not available. They contend that an increase in taxes or a payroll tax on all Minnesota citizens could have been used. Plaintiffs cite *U.S. Trust Co., supra.*, as a case involving the impairment of a public contract, for the proposition that public contracts may be impaired only if the legislation is "reasonable and necessary" to "serve an important public purpose." The Court there also held that in public contracts the tests of "reasonable" and "necessary" are subject to a high degree of scrutiny.

> Complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all. 431 U.S. at 26.

Clearly, this is not a situation where the state merely "wanted to spend the money". It is also clear in this case that solving an immediate fiscal crisis affecting the viability of the state is an important public purpose. *U.S. Trust Co.* is also distinguishable from the case at bar in that it involved the total repeal of a statutory covenant when modification would have been sufficient. Here, the state did not permanently withdraw its funding to all public employee retirement funds, but instead temporarily modified the system of funding the retirement funds during the economic emergency.

The Court realizes the Legislature was not able to function in its usual deliberate manner due to constraints in time. The Legislature was required to act quickly or force the executive branch to proceed by unallotment. When the Legislature is forced to take action in an emergency situation, their judgment as to the alternative options available must be given great deference. It can be argued that a stronger showing of reasonableness and necessity might be required if the Legislature had been operating under normal conditions and had had time to fully consider all alternatives available in full committee hearings. It is not for the Court to decide whether or not higher taxes on all citizens would have been a more viable alternative. It is known that such a bill was introduced during the special session and voted down by the legislature. Also, the state did increase taxes in other sections of the Bill.

Under these circumstances, the Court necessarily concludes that the legislation in question does not violate the impairment of contract clause.

II.

EQUAL PROTECTION

Plaintiffs attack the Bill on the grounds that it violates the equal protection provision set forth in U.S. Const. amend. XIV, sec. 1 (No state shall . . . deny to any person within its jurisdiction the equal protection of the laws), and the Uniformity Clause of Minn. Const. art. X, sec. 1

(Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes). While it is true that the tests for validity under these two provisions are identical, e.g. *Guilliams v. Commissioner of Revenue,* 299 N.W.2d 138 (Minn. 1980), for our purposes in this case we will address these constitutional provisions separately.

For a law to violate Minn. Const. art. X, sec. 1, it must first of all be a tax. Plaintiffs here contend that the Bill is in effect a subterfuge perpetrated by the Legislature upon public employees. Plaintiffs request that the Court look beyond the Legislature's designations to the actual effect of the legislation. Money is being taken from the pension funds and placed in the state treasury. Additional money is then taken from the public employees to replace the money from the pension funds for the state treasury. This, say plaintiffs, constituted a tax.

What is a tax? Taxes have been described by the Minnesota Supreme Court as ". . . pecuniary charges imposed by the legislative power to raise money for public purposes." In Re Petition of S.R.A. 213 Minn. 487, 488, 7 N.W.2d 484, 487 (1943). A more comprehensive definition can be found in 84 C.J.S. *Taxation* §1, at 32 (1954):

> [. . . [t]he essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority, in the exercise of the taxing power, the contribution being of a proportionate character, payable in money, and imposed, levied and collected for the purpose of raising revenue, to be used for public or governmental purposes and not as payment for some special privilege granted or service rendered (footnotes omitted).

While the increased employee pension contributions do have some characteristics bearing a close resemblance to those of a tax, the increased contributions have other characteristics which differ significantly from those of a tax. Each contribution to a pension fund is credited to the employee's individual retirement account. Most public employees (with the limited exception of members of certain local police and fire relief associations) receive a refund of these employee contributions upon termination of public employment. (Statutory authority for these refunds can be found as follows: Public Employees Retirement Fund, Minn. Stat. §353.34; Teachers Retirement Fund, Minn. Stat. §354.49; Minneapolis Municipal Employees Retirement Fund, Minn. Stat. §442A.22; Minnesota State Retirement System, Minn. Stat. §352.22.) Finally, and most importantly, the employee contributions entitle the employee to receive pension benefits upon retirement. It is definitely not the nature of a tax that it should inure to the direct financial gain of the taxpayer.

Assuming, therefore, that the 4 percent employer contribution provisions are valid, how can the public employees' additional 2 percent pension contributions be considered a tax? The provisions of the Bill under attack provide only that the employee contributions be increased by 2 percent of salary which amounts are then credited to the individual employee's retirement account. Under this very restricted analysis, the increased employee contributions bear no resemblance to a tax whatsoever.

Regardless of whether this restricted analysis is used, the Court cannot consider the increased employee contributions to be a tax subject to the protection of the Uniformity Clause.

There is another flaw in plaintiffs'-intervenors' tax argument. Throughout the course of this litigation, plaintiffs-intervenors have maintained that they are not attacking those provisions of the Bill requiring the pension funds to pay the 4 percent employer contributions to the state treasury. Consequently, this Court must presume that those provisions of the Bill do in fact pass constitutional muster. *Miller Brewing Co. v. State,* 284 N.W.2d, 353 (Minn. 1979); *Reed v. Bjornson,* 191 Minn. 254, 253 N.W. 102, (1934). In this respect, the Court is also guided by Minn. Stat. §645.17 which provides, in part:

> In ascertaining the intention of the Legislature, the Court may be guided by the following presumptions: . . . (3) The Legislature does not intend to violate the constitution of the United States or of this state.

The plaintiffs-intervenors similarly run afoul of their 2 percent-4 percent dichotomy in the area of equal protection. The Court must regard the 4 percent provision to be valid. *Miller Brewing Co.,* supra. Consequently, reading the 2 percent provision in juxtaposition with the 4 percent provision, the Bill is in compliance with the equal protection requirements set forth in *Guilliams,* 299 N.W.2d, at 142. That is to say that the classification of public employees (as opposed to private employees) to pay an additional 2 percent of salary into the pension fund:

1. Is not manifestly arbitrary or fanciful but is genuine and substantive;

2. Is genuine or relevant to the purpose of the Bill; and

3. The purpose of the Bill is one that the state can legitimately attempt to achieve, *Guilliams,* supra.

While not necessarily agreeing that the means used by the Legislature was the better or more reasonable alternative, "it is evident from all of the considerations presented to [the Legislature] and those of which we may take judicial notice, the question is at least debatable." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S. Ct. 715, 724, 66 L.Ed.2d 661, 669 (1981) (quoting *United States v. Carolene Products Co.*, 304 U.S. 144, 153-154, 58 S.Ct. 778, 784, 82 L.Ed. 1234 (1938). If the question is debatable, litigants may not procure invalidation of the legislation merely by tendering evidence in court that the Legislature was mistaken. This Court may not substitute its judgment for that of the Legislature provided that the classification is made on a rational, genuine basis, or at least debatably so. *Minnesota v. Clover Leaf Creamery Co.*, supra.

Hence, the argument by the state must prevail on the equal protection question because once the validity of the 4 percent provision is assumed, the reasonableness of the 2 percent provision is at least debatable in that:

1. The maintenance of the actuarial soundness of the pension funds was shown to have been an essential element in formulating the state's credit rating. Therefore, maintaining the actuarial soundness of the funds would help to preserve the fiscal integrity of the state — a stated purpose of the Bill.

2. The vast majority, if not all, of the public employees affected will eventually receive some benefit from the funds remaining actuarially sound.

3. The state's reaction to its economic emergency will avoid the lay-off of many public employees that might have otherwise been necessary.

It is not necessary, for equal protection purposes, that the Bill impact upon all members of a class with mathematical precision so long as the classification is not arbitrary. *Guilliams,* supra. "When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. [Citations omitted.] The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility." *Personal Adm'r of Massachusetts v. Feeney,* 442 U.S. §56, 272, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870 (1979) (quoted in *Guilliams,* 299 N.W.2d at 143.)

Plaintiffs allege but offered no evidence that by not including members of the University of Minnesota faculty in the class, the Legislature has made an arbitrary classification. This is not so. The University of Minnesota faculty has a separate pension fund. See Minn. Stat. §356.20. Also, Minn. Const. art. XIII, sec. 3 provides that "All of the rights immunities, franchises and endowments heretofore granted or conferred upon the University of Minnesota are perpetuated in the university." Case law has established that the courts must be reluctant to invade the sphere of authority reserved to the regents of the University of Minnesota. *Bailey v. University of Minnesota,* 290 Minn. 359; 187 N.W.2d, 702 (1971). Absent any evidence to the contrary, it may be assumed that the Legislature is according the University similar deference by virtue of its constitutional grant. At any rate, we cannot conclude that the classification was arbitrary or capricious solely because it excludes University of Minnesota faculty.

Where the economic emergency is agreed and admitted by both sides to have been genuine and where the failure of the Legislature and the Governor to reach a solution to that emergency threatened to require the lay-off of thousands of public employees, it is not at variance with either state or federal constitutions for the Legislature and Governor to have chosen a solution, the fairness and reasonableness of which is at least debatable, which requires an increase of the public employees' contribution to retirement funds measured by 2 percent of their salary.

In making this determination, it should not be assumed that the federal and state constitutions permit borrowing from public employees' retirement funds. Nor should it be assumed that further legislative initiatives altering public employee-employer contributions to retirement funds to remedy temporary economic conditions in lieu of statewide taxes would be constitutionally available in future emergencies, should they occur.

Parenthetically, it must be observed that many public employees can in large measure anticipate a benefit from the 2 percent contribution, by way of refund for those eligible when separating from the public service and by way of improved funding for retirement when retirement age is reached for others.

III.

DUE PROCESS

Plaintiffs also allege that the Bill violates the due process clauses of the United States and Minnesota Constitutions. For the reasons stated in Section I above, plaintiffs have no protectable property right in employee pension contributions in this particular instance. To invoke the protections of due process, a liberty or property interest must be present. *Paul v. Davis,* 424 U.S. 693 (1976); *Board of Regents v. Roth,* 408 U.S. 564 (1972). Plaintiffs do not assert any liberty interest. Furthermore, a classification which satisfies the equal protection clause also satisfies the due process clauses of the United States and Minnesota Constitutions. *Guilliams,* supra.

IV.

UNFAIR LABOR PRACTICE

Minn. Stat. §179.66, subd. 6 (1980) expressly provides that nothing in the Public Employment Labor Relations Act is to be construed "to impair, modify, or otherwise alter, or indicate a policy contrary to the authority of the Legislature of the State of Minnesota to establish by law schedules of rates of pay for its employees or their retirement or other fringe benefits related to the compensation of such employees."

It is the plaintiffs' contention that the Bill constitutes a unilateral change in the terms and conditions of employment without prior notice and bargaining by effecting a reduction in compensation and by expanding the provisions for unpaid leaves of absence, and is therefore an unfair labor practice within the meaning of Minn. Stat. §179.68, subd. 2 (1980) which states:

> A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of the public employees in an appropriate unit regarding grievance procedures and the *terms and conditions of employment,* but such obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession. [emphasis supplied]

The claim of reduced compensation is based upon the 2 percent increase employee contributions to pension funds which it is alleged has the effect of reducing the take-home pay of employees, involving a term and condition of employment. We find this argument answered by the provisions of Minn. Stat. §179.63, subd. 18, defining terms and conditions of employment as:

> The hours of employment, the compensation therefor including fringe benefits *except retirement contributions or benefits,* and the employer's personnel policies affecting the working conditions of the employees. [emphasis supplied]

The Legislature by excluding "retirement contributions or benefits" from its definition of terms and conditions of employment has expressly reserved the right to pass legislation exclusively in this area. In *Minnesota Education Association v. State of Minnesota,* 282 N.W.2d 915 (Minn. 1979), the Minnesota Supreme Court found that the Legislature did not commit an unfair labor practice by exercising its authority to set the terms and conditions of public employment by statute, despite a prior arbitration award.

In the *MEA* case *supra,* the Court found that while the right to reject arbitration awards was taken away from the public employers, that the "employer" of state employees is the executive branch and not the legislative branch. Hence, Commissioner Sundquist, her representatives, or other public employers cannot commit an unfair labor practice by simply following the specific terms of the statute. Public employers are defined under Minn. Stat. §§179.64, subd. 4 and 179. 74, subd. 2 (1980). The attack must be made, if it is to be made, pursuant to constitutional guarantee, not under statute, where the Legislature, not the executive branch, committed an alleged act.

Article II, Sec. 8 of the Bill which allows employees (1) to continue to accrue vacation and sick leave (2) to be eligible for paid holidays and insurance benefits, and (3) to accrue seniority and length of service credits during up to 160 hours of unpaid leave is not an unfair labor practice. The plaintiffs have argued that under *NLRB v. Katz,* 369 U.S. 736 (1962) the employers have committed an unfair labor practice by making unilateral changes in the conditions of employment by increasing benefits while under collective bargaining agreements. The purpose of the legislation was to encourage employees to take unpaid leaves of absence thereby reducing state expenditures and was not an attempt by the Legislature to undermine the representative union's authority. The *Katz* case clearly left open the possibility that there might be circumstances which would justify unilateral action. We find that to be the case here. The financial crisis justified the action taken and did not attempt or intend to alter the labor relations between the parties or denigrate the importance of the union.

In matters of labor relations concerning public, as distinguished from a private, employer, the validity of legislative action is measured by its constitutional compliance inasmuch as the Legislature itself is the body that statutorily defines an unfair labor practice. Nothing contained herein, however, is to be construed to approve any variation in the terms of a collective bargaining agreement once it has been approved by the Legislature, that would be either detrimental to the employee or to the union's right of representation.

In conclusion we do note that our weighing of the issues in this case has been affected by conflicting considerations. We are reluctant, on the one hand, to approve legislative acts which look to the state's pension plans and fund in any manner for the solution to the state's fiscal problems. On the other hand, we must accord to this Bill the presumption of constitutionality and we recognize that the actions of the legislature must be viewed in the light of the circumstances under which it was required to act.

A.L.G.
G.L.M.
B.C.S.

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

AFSCME Councils 6, 14, 65 and 96, AFL-CIO,
Plaintiffs,

vs.

BARBARA L. SUNDQUIST, Commissioner of Employee Relations, ALLEN RUDELL, Commissioner of Finance, and the State of Minnesota,
Defendants,

and

The Minneapolis Police Relief Association, the Minneapolis Fire Department Relief Association, the Minnesota Federation of Teachers, AFL-CIO, the Minnesota Police and Peace Officers Association, the Minneapolis Employees Retirement Board, Minnesota Professional Firefighters Association, AFL-CIO, Duluth Police Union, AFL-CIO, Police Officers Federation of Minneapolis, Minnesota Firefighters Joint Pension Council, Minneapolis Retired Police Association, Rochester Police Relief Association, Minnesota Police Pension Council, Minnesota Education Association, Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320, St. Paul Police Relief Assn.,

Intervenors.

ORDER

Appearances:

Gregg M. Corwin for AFSCME unions;

Joseph T. O'Neill for St. Paul Police Relief Association;

Eric R. Miller for Minnesota Education Association;

Jeffrey W. Jacobs for Teamster Local 320;

Roger A. Peterson for Minneapolis Police Relief Association, Minneapolis Fire Department Relief Association, Minnesota Federation of Teachers, AFL-CIO, Minnesota Police and Peace Officers Association, Minneapolis Employees Retirement Board, Minnesota Professional Firefighters Association, AFL-CIO, Duluth Police Pension Association, Duluth Police Union, AFL-CIO, Police Officers Federation of Minneapolis Retired Police Association, Rochester Police Relief Association, Minnesota Police Pension Council;

William O'Brien for LELS, Local 49;

Richard B. Allyn for Barbara L. Sundquist, Commissioner of Employee Relations, Allen Rudell, Commissioner of Finance, and the State of Minnesota.

Motion heard December 30, 1982.

Based upon all of the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

I.

Plaintiffs have moved for a temporary injunction restraining the implementation of those provisions of Minn. Laws 1982, 4th Ex. Sess., ch. 1, which in part mandate a 2% increase in employee contributions to their respective public employee pension funds.

II.

There has not been a sufficient showing that plaintiffs' members will suffer irreparable harm if the temporary injunction is not granted pending trial.

III.

The potential harm to defendants if the temporary injunction were to be granted outweighs any potential harm to plaintiffs if the temporary injunction is denied.

IV.

The likelihood of one party or the other prevailing at trial on the merits has not been established at this time.
and states its:

CONCLUSIONS OF LAW

A sufficient showing to justify the issuance of a temporary injunction has not been made.
and makes the following:

ORDER

1. Plaintiff's motion for a temporary injunction restraining the implementation of the provisions of Minn. Laws 1982, 4th Ex. Sess., ch. 1, is denied.

2. This matter shall be placed on the trial calendar for expedited hearing on January 6, 1983 at 9:30 A.M. in the Ramsey County Court House.

ARCHIE L. GINGOLD
Judge of District Court*
GORDON L. McRAE
Judge of District Court*
BRUCE C. STONE
Judge of District Court*

Dated this 30th day of December, 1982.

*Retired Judges serving pursuant to the December 20, 1982 order of the Minnesota Supreme Court.

MEMORANDUM

The Court fully recognizes the importance and urgency of this lawsuit to all parties in this action and, to reduce as far as is possible the harm that might come from delay, has cleared its calendar from other cases and will hear the matter on its merits on the 6th day of January, 1983.

A.L.G.
G.L.M.
B.C.S.

STATE OF MINNESOTA
IN SUPREME COURT
No. 82-1612, 82-1614, 82-1627

MINNESOTA STATE EMPLOYEES UNION AFSCME, Council 6, AFL-CIO,

Petitioner,

vs.

ALBERT H. QUIE, Governor of the State of Minnesota, MINNESOTA STATE LEGISLATURE and the STATE OF MINNESOTA,

Respondents.

and

AFSCME Councils 14, 65 and 96, AFL-CIO,

Petitioners,

vs.

ALBERT H. QUIE, Governor of the State of Minnesota, MINNESOTA STATE LEGISLATURE and the STATE OF MINNESOTA,

Respondents,

and

MINNESOTA TEAMSTERS PUBLIC AND LAW ENFORCEMENT EMPLOYEES Union Local 320,

Petitioners,

vs.

STATE OF MINNESOTA; MINNESOTA STATE LEGISLATURE and ALBERT H. QUIE, Governor of the State of Minnesota,

Respondents.

ORDER

The above matters and all motions pending or to be made are referred and transferred to the District Court, Second Judicial District, for expedited hearing and determination.

The hearing there shall be before a three-judge panel of retired district court judges.

The Honorable Archie Gingold, Retired District Court Judge of the Second Judicial District, The Honorable Gordon McRae, Retired District Court Judge of the Ninth Judicial District, and The Honorable Bruce C. Stone, Retired District Court Judge of the Fourth Judicial District are hereby appointed to such panel and,

The Honorable Archie Gingold is appointed as Chief Judge of the panel.

BY THE COURT

DOUGLAS K. AMDAHL
Chief Justice

Dated: December 20, 1982
Filed Supreme Court December 20, 1982.
John McCarthy, Clerk.

STATE OF MINNESOTA
Office of The Clerk of the Appellate Courts
State Capitol, St. Paul

Dated: November 22, 1983

AFSCME Councils, 6, 14, 65 and 96, AFL-CIO,

Appellants,

vs. C1-83-152, C8-164, C1-83-166,
C3-83-176, C5-83-168,

BARBARA L. SUNDQUIST, Commissioner of Employee Relations, et al.,

Respondents,

and

THE MINNEAPOLIS POLICE RELIEF ASSOCIATION, et al.,

Appellants,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, Local 49,

Amicus Curiae.

Please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

IT IS FURTHER ORDERED, that no attorney's fees are allowed pursuant to Rule 140, Rules of Civil Appellate Procedure.

Respectfully,

WAYNE TSCHIMPERLE
Clerk of the Appellate Courts

Office of Appellate Courts, filed November 22, 1983.
Wayne Tschimperle, Clerk.

IN THE SUPREME COURT OF THE STATE OF MINNESOTA

Nos. C1-83-152, C8-83-164, C1-83-166, C3-83-167 and C5-83-168

AFSCME Councils 6, 14, 65 and 96, AFL-CIO,
Plaintiffs-Appellants,

v.

BARBARA L. SUNDQUIST, Commissioner of Employee Relations; ALLEN RUDELL, Commissisoner of Finance; and the STATE OF MINNESOTA,
Defendants-Respondents,

and

The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; the Minnesota Police and Peace Officers Association; the Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; Minnesota Police Pension Council; Minnesota Education Association; Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320; St. Paul Police and Firefighters Relief Associations; Minnesota Association of Professional Employees,
Intervenors-Appellants,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, Local 49,
Amicus Curiae.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that The Minneapolis Police Relief Association; the Minneapolis Fire Department Relief Association; the Minnesota Federation of Teachers, AFL-CIO; the Minnesota Police and Peace Officers Association; the Minneapolis Employees Retirement Board; Minnesota Professional Firefighters Association, AFL-CIO; Duluth Police Pension Association; Duluth Police Union, AFL-CIO; Police Officers Federation of Minneapolis; Minnesota Firefighters Joint Pension Council; Minneapolis Retired Police Association; Rochester Police Relief Association; and Minnesota Police Pension Council, Intervenors-Appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Minnesota, entered in this action. The Petition for Re-Hearing was denied, and the judgment was entered on November 22, 1983, affirming the judgment of the three-judge District Court panel upholding the validity of *1982 Laws of Minn.*, Third Special Session, Chapter 1, against Appellants' assertions that certain provisions thereof violate the United States Constitution.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

PETERSON, ENGBERG & PETERSON
Roger A. Peterson (Atty. #86332)
Richard D. Kampa, Jr. (Atty. #127243)
Counsel for Intervenor-Appellants
700 Title Insurance Building
Minneapolis, Minnesota 55401
(612) 338-6743

Dated: February 13, 1984.

STATE OF MINNESOTA
SS.
COUNTY OF HENNEPIN

Richard D. Kampa, Jr., being first duly sworn, on oath, states and deposes that on the 13th day of February, 1984, he did serve the attached Notice of Appeal to the Supreme Court of the United States upon counsel of record for each of the parties involved in the action from which such appeal is taken, by mailing a copy thereof to each such counsel in an envelope, with first class postage prepaid, addressed to the last known office address of each such counsel as follows:

Hubert H. Humphrey, III
Attorney General
State of Minnesota

Kent G. Harbison
Chief Deputy Attorney General
Peter M. Ackerberg
Special Assistant Attorney General
515 Transportation Building
St. Paul, MN 55155

Eric R. Miller
John R. Tunheim
1700 First Bank Building
St. Paul, MN 55101

William O'Brien
Bruce A. Finzen
1210 Minnesota Building
St. Paul, MN 55101

Joseph T. O'Neill
800 Northwestern National
Bank Building
St. Paul, MN 55101

Gregg M. Corwin
Russell J. LaCourse
548 West Parkdale Plaza
1660 S. Highway 100
St. Louis Park, MN 55416

Jeffrey W. Jacobs
3001 University Ave. S.E.
Suite 506
Minneapolis, MN 55414

RICHARD D. KAMPA, JR.

Subscribed and sworn to before me this 13th day of February, 1984.

LOIS C. POTZ
Notary Public-Minnesota
Hennepin County

My Commission Expires 1-28-1986.

Underscoring and strikeouts as shown in the enrolled act are set in italic and boldface.

1982
LAWS OF MINNESOTA
72nd Legislature, Third Special Session
Convening Dec. 7, 1982
Adjourning Dec. 10, 1982

STATE GOVERNMENT—FINANCING
H.F. No. 4 Third Special Session—1982
CHAPTER NO. 001

AN ACT relating to the financing of government in this state; declaring an emergency; reducing appropriations for the fiscal year ending June 30, 1983, with certain conditions; reducing employer and increasing employee contributions to various retirement funds; adding two members to the investment advisory council; altering the community social services grant payment schedule; requiring employees to pick up employee contributions to certain public pension plans; encouraging voluntary unpaid leaves of absence; altering certain education aid payments; reducing payments to local units of government; increasing the income tax surtax rate; increasing the sales tax rate and extending the tax to certain telephone charges; adopting certain federal provisions relating to corporate income taxation; amending Minnesota Statutes 1982, sections 11A.08, subdivision 1; 121.904, subdivision 4a; 124.155, subdivisions 1 and 2; 256B.03, subdivision 2; 256E.06, subdivision 3; 290.01, subdivisions 20a and 20b; 290.06, subdivision 2e; 290.09, subdivisions 3 and 7, and by adding a subdivision; 290.131, subdivision 1; 290.132, subdivision 1; 290.134, subdivision 1; 290.135, subdivision 1; 290.136, subdivision 1; 297A.01, subdivision 3; 297A.02; 297A.03, subdivision 2; 297A.14; 297B.02; Laws 1981, Third Special Session chapter 2, article IV, section 3, subdivision 2, as amended; and section 5, subdivision 3, as amended; proposing new law coded in Minnesota Statutes, chapter 356; repealing Laws 1981, Third Special Session chapter 2, article III, section 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

Section 1. (FINDINGS AND PURPOSE.)

The legislature finds and declares that the state is presently confronted with a grave economic emergency in that the state will not receive revenue sufficient to meet its legal duty to avoid a deficit while still upholding its responsibility to protect the health, safety, and welfare of its citizens. The legislature further finds that for the state to continue to be a viable governmental entity it is vital that significant and immediate reductions in state expenditures be made and that mechanisms to increase state revenues be immediately adopted.

In recognition of the economic plight facing citizens of the state of Minnesota and other states, the legislature also finds and declares that legislation designed to correct this economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government.

Therefore, the legislature finds and declares that the most effective means to serve all of these important goals and solve the present economic emergency is to enact the following combination of provisions for reductions in state expenditures and increases in state revenues.

ARTICLE II

STATE AGENCY APPROPRIATION REDUCTIONS

Section 1. [APPROPRIATION REDUCTIONS: SUMMARY.]

The sums set forth in the column designated "APPROPRIATION REDUCTIONS" are reduced from the various general fund appropriations to the specified agencies. The figure "1983" whenever used in this article, means that the listed appropriation reductions are from the appropriations for the year ending June 30, 1983.

SUMMARY
(General Fund Only)

NON-DEDICATED REVENUE	
State Departments	$28,146,200
APPROPRIATIONS	
State Departments	8,480,000
APPROPRIATION REDUCTIONS	
State Departments	(49,897,500)
Transportation and Other Agencies	(3,315,000)
Education	(8,070,000)
Welfare, Corrections, Health	(26,902,000)
TOTAL APPROPRIATION REDUCTIONS	(88,184,500)
CANCELLATIONS	(5,391,000)
NET BENEFIT TO GENERAL FUND	$113,241,700

Sec. 2. [APPROPRIATION REDUCTIONS.]

Subdivision 1. [STATE DEPARTMENTS.]

The general fund appropriations in Laws 1981, chapters 306, 346; and 356; as amended by Laws 1981, First Special Session chapter 4, article 4, are reduced by the listed amounts:

(a) Legislature	($119,800)

The amounts that are reduced from each appropriation are as follows:

	1983
(1) Revisor of Statutes	(49,800)
(2) Legislative Auditor	(70,000)

(b) Supreme Court	(35,000)
(c) Contingent Accounts —	
General	(200,000)
Fuel and Utilities	(1,000,000)
(d) Attorney General	(50,000)
(e) Executive Council	(1,000,000)
(f) Investment Board	(67,000)
(g) Administration	(166,000)
(h) Finance	(145,000)
(i) Employee Relations	(50,000)
(j) Revenue	(315,000)
(k) Agriculture	(88,500)

$62,000 of this reduction is in the appropriation for flood plain management grants in the southern Minnesota river basin study area two, administered by the soil and water conservation board.

(l) Animal Health, Board of ($100,000)

(m) Natural Resources (1,273,000)

The amounts that are reduced from each program are as follows:

(1) Field Services Support (133,000)

(2) Water Resources Management (471,000)

Notwithstanding the provisions of Minnesota Statutes, section 105.392, subdivision 2, during the period ending July 1, 1983, the commissioner shall enter into agreements for the conservation of wetlands for a period of ten years, but the commissioner may obligate funds for payment at one year intervals for fiscal year 1983, subject to the availability of appropriated funds, if this condition is included in the agreement.

(3) Mineral Resources Management (115,000)

(4) Forest Management (198,000)

(5) Parks and Recreation Management (100,000)

(6) Enforcement (7,000)

(7) Planning and Research (13,000)

(8) Trails and Waterways Management (236,000)

In addition to the above reductions, it is estimated that $350,000 of the open appropriation for payments in lieu of taxes on natural resources land pursuant to Minnesota Statutes, section 477A.12, will be cancelled.

It is also estimated that, if the department of natural resources deficiencies for workers' compensation and unemployment compensation are fully funded according to the November 17, 1982 estimate, the sum of $541,000 will cancel to the general fund.

(n) Zoological Board	($35,000)

Admission fees shall be raised to the limits provided in Laws 1981, chapter 356, section 26. It is estimated that this fee increase will generate $115,000 in non-dedicated revenue for the general fund.

(o) Pollution Control Agency	(650,000)
(p) Energy, Planning and Development	(358,000)
(q) Natural Resources Acceleration (LCMR)	(1,399,600)

The legislative commission on Minnesota resources shall apportion this appropriation reduction, and previous reductions, among the several programs and activities in Laws 1981, chapter 356, section 31; and also among the programs in Laws 1977, chapter 421, sections 12 and 13; Laws 1979, chapter 301, sections 3 and 6; and Laws 1981, chapter 304, section 4, to the extent that the reductions will result in reductions in expenditures from the general fund by June 30, 1983. Appropriation reductions apportioned by the legislative commission on Minnesota resources during the 1981-83 biennium shall not be treated as cancelations available for expenditure in subsequent bienniums.

(r) Labor and Industry (50,000)

(s) Military Affairs (127,000)

(t) Veterans Affairs ($445,000)

The non-dedicated receipt limitation in Laws 1981, chapter 356, section 36, for fiscal year 1983 is removed.

(u) Human Rights (10,000)

(v) Retirement Contributions (42,213,600)

The amounts that are reduced from the various appropriations are as follows:

(1) State Agencies (9,781,600)

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before July 1, 1983, employer retirement contributions for the following employees are reduced by four percent of salary: legislators, judges and constitutional officers, pursuant to Laws 1981, chapter 356, section 48; state employees, pursuant to sections 352.04, subdivision 3; and 352D.04, subdivision 2; correctional employees, pursuant to section 352.92, subdivision 2; highway patrol employees, pursuant to section 352B.02, subdivision 1; and members of the teachers retirement association employed by state agencies, pursuant to section 354.42, subdivisions 3 and 5. The commissioner of finance shall apportion this reduction among the appropriations made to the several state agencies.

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contributions for the following employees are increased by two percent of salary: legislators, pursuant to section 3A.03, subdivision 1; judges, pursuant to sections 490.102, subdivision 8, and 490.123, subdivision 1, except that this clause relating to judges and the companion provision relating to appropriations for employer contributions for judges are expressly declared to be severable from the remaining provisions of this item (1); constitutional officers, pursuant to section 352C.09, subdivision 1; state employees, pursuant to sections 352.04, subdivision 2; and 352D.04, subdivision 2; correctional employees, pursuant to section 352.92, subdivision 1; highway patrol employees, pursuant to section 352B.02, subdivision 1; and members of the teachers retirement association employed by state agencies, pursuant to section 354.42, subdivision 2. These increased employee contributions shall be posted to each individual employee's retirement account.

In addition to the appropriation reduction in this item (1), the commissioner of finance shall reduce allotments for grants-in-aid or other payments from the general fund to state and semi-state agencies that employ members of the Minnesota state retirement system but are not on the state payroll system including, but not limited to, the Minnesota historical society, state horticultural society, Minnesota crop improvement association, and the state agricultural society, to reflect the savings to those agencies as a result of the reduced employer contributions provided in this item (1).

(2) University of Minnesota

(1,512,000)

This reduction is attributable to the decrease in employer retirement contributions required by item (1) for university employees who are members of the Minnesota state retirement system.

This reduction is in the appropriations made to the University of Minnesota in Laws 1981, chapter 359, sections 7 to 10, allocated among the various appropriation accounts by the commissioner of finance.

(3) Metropolitan Agencies

(1,080,000)

This reduction is in the appropriations for public transit made to the metropolitan transit commission in Laws 1981, chapter 363, section 55, subdivision 1, allocated among the various appropriation accounts by the commissioner of finance.

In addition to the appropriation reduction in this item (3), the commissioner of finance shall reduce allotments for homestead credits or other payments from the general fund to the metropolitan council, metropolitan waste control commission, metropolitan sports facilities commission and other metropolitan agencies that employ members of the Minnesota state retirement system to reflect the savings to those agencies as a result of the reduced employer contributions provided in item (1).

(4) Public Employees Retirement Association

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contributions for the following employees are increased by two percent of salary: public employees, pursuant to section 353.27, subdivision 2; and police and firefighters, pursuant to section 353.65, subdivision 2. These increased employee contributions shall be posted to each individual employee's retirement account. It is estimated that these increased contributions will amount to $24,440,800 by January 1, 1984. Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before July 1, 1983, upon each credit of employer contributions to the public employees retirement fund and the public employees police and fire fund, a portion of the employer contribution equal to four percent of salary shall be paid from the public employees retirement fund and the public employees police and fire fund to the state treasury and credited to the general fund. It is estimated that these payments will amount to $24,440,800 by July 1, 1983.

(5) Municipal Employees Retirement Fund

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contribution for Minneapolis employees, pursuant to section 422A.10, is increased by two percent of salary. These increased employee contributions shall be posted to each individual employee's retirement account. It is estimated that these increased contributions will amount to $1,800,000 by January 1, 1984.

Beginning with the first full pay period after

December 28, 1982 and ending with the last full pay period before July 1, 1983, upon each credit of employer contributions to the municipal employees retirement fund, a portion of the employer contribution equal to four percent of salary shall be paid from the municipal employees retirement fund to the state treasury and credited to the general fund. It is estimated that these payments will amount to $1,800,000 by July 1, 1983.

(6) Local Police and Salaried Firefighters Relief Associations

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contributions for members of local police and salaried firefighters relief associations that receive amortization state aid pursuant to section 423A.02 are increased by two percent of salary. These increased employee contributions shall be posted to each individual employee's retirement account. It is estimated that these increased contributions will amount to $1,790,400 by January 1, 1984.

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before July 1, 1983, upon each credit of employer contributions to the local police and salaried firefighters relief association retirements funds, a portion of the employer contribution equal to four percent of salary shall be paid from the retirement funds to the state treasury and credited to the general fund. It is estimated that these payments will amount to $1,790,400 by July 1, 1983.

(7) Teachers Statewide

(26,400,000)

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before July 1, 1983, the employer retirement contribution for teachers employed by political subdivisions, pursuant to section 354.42, subdivisions 3 and 5, shall be reduced by four percent of salary. Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contribution for teachers employed by political subdivisions, pursuant to section 354.42, subdivision 2, shall be increased by two percent of salary. These increased contributions shall be posted to each individual employee's retirement account.

School district teachers on extended leave of absence pursuant to section 125.60 and receiving employer contributions pursuant to section 354.094 and school district teachers teaching part-time pursuant to section 354.66, shall not have their employer contributions reduced or employee contributions increased as provided in this item (7).

(8) Teachers in First Class Cities

(3,440,000)

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before July 1, 1983, the employer retirement contributions for teachers in Duluth, Minneapolis, and St. Paul, pursuant to section 354A.12, subdivision 2, shall be reduced by four percent of salary. The commissioner of finance shall apportion this reduction among the appropriations to the teachers retirement associations in cities of the first class.

Beginning with the first full pay period after December 28, 1982 and ending with the last full pay period before January 1, 1984, the employee retirement contribution for teachers in Duluth, Minneapolis, and St. Paul, pursuant to section 354A.12, subdivision 1, shall be increased by two percent of salary. These increased contributions shall be posted to each individual employee's retirement account.

Teachers on extended leave pursuant to section 125.60 and receiving employer contributions pursuant to section 354A.091 and teachers teaching part-time pursuant to section 354A.094, shall not have their employer contributions reduced or employee contributions increased as provided in this item (8).

(9) Pension Fund Reimbursements

The sum of $8,480,000 is appropriated from the general fund to the commissioner of finance for apportionment to the several pension funds for the following purposes: $5,840,000 to reimburse the funds for any amount by which the increased employee contributions received by January 1, 1984 are less than the reduced employer contributions received by July 1, 1983; $2,000,000 to reimburse the funds for the loss of investment income they suffer, as determined by the commissioner of finance, because the reduced employer contributions received by July 1, 1983 are not matched by increased employee contributions until January 1, 1984; and $640,000 to fund increased contribution refunds due to the increased employee contributions required by this section. This appropriation is available until June 30, 1984.

(10) Notwithstanding Laws 1982, chapter 641, article I, section 2, subdivision 1, paragraph (i), item (1), the increase in contribution rates required by that item shall be adjusted to reflect the changes in contribution rates required by

that item shall be adjusted to reflect the changes in contribution rates required by this section.

Subd. 2. [TRANSPORTATION AND OTHER AGENCIES.]

The general fund appropriations in Laws 1979, Special Session chapter 1; and Laws 1981, chapters 346; 357; and 363; as amended by Laws 1981, First Special Session chapter 4, article 4, are reduced by the listed amounts:

(a) Transportation	(2,595,000)

Appropriation for MTC operating subsidies are reduced by $595,000. Appropriations for MTC social fare reimbursements are reduced by $1,300,000.

Appropriations for statewide nonmetropolitan transit operating assistance are reduced by $500,000.

Appropriations for public transit capital grants are reduced by $200,000.

(b) Public Safety	(300,000)
(c) Minnesota Historical Society	(200,000)

Of this reduction, $108,000 is for local historic site preservation grants.

(d) Arts, Board of the	(220,000)

Subd. 3. [EDUCATION.]

The general fund appropriations in Laws 1981, chapter 359, as amended by Laws 1981, First Special Session chapter 2, are reduced by the listed amounts:

(a) Education, Department of	(400,000)

(b) Higher Education Coordinating Board (500,000)

$40,000 of this reduction is from the private college contract program.

(c) State University Board (1,500,000)

(d) State Community College Board (750,000)

(e) University of Minnesota (4,920,000)

It is the intent of the legislature that $1,920,000 of this reduction be taken in the form of proportionate reductions in compensation for academic employees.

Subd. 4. [WELFARE, CORRECTIONS, HEALTH.]

The general fund appropriations in Laws 1975, chapter 437, article XI, section 2, subdivision 2; laws 1981, chapter 354; and chapter 360; as amended by Laws 1981, First Special Session chapter 2, are reduced by the listed amounts:

(a) Public Welfare (24,328,000)

The amounts that are reduced for each purpose are as follows:

(1) Central Office Salaries, Supplies, and Expenses (435,000)

(2) Community Social Services Act (12,876,000)

(3) Aging Services (1,915,000)

(4) Medical Assistance (5,200,000)

Notwithstanding any other law to the contrary, payments to all medical assistance vendors shall be reduced by four percent for the period January 1, 1983 to June 30, 1983. For long term care providers, this reduction shall apply to payment rates in effect on January 1, 1983 and shall also be applied to any rate established after that date for payment for the period January 1, to June 30, 1983. All payments to vendors shall be uniformly affected regardless of the timing of any rate years. This reduction in payments shall not be subject to the rulemaking provisions of the Administrative Procedure Act.

(5) State Hospitals and Nursing Homes

(3,902,000)

The commissioner shall implement the reductions to institutional salaries and supplies and expenses equitably among all programs and shall attempt to maintain quality of care for all inpatient residents.

$2,800,000 of this reduction is from institutional salaries.

$602,000 of this reduction is from institutional supplies and expenses.

$500,000 of this reduction is from Rochester State Hospital accounts. Notwithstanding sections 94.09 to 94.12 and any other law to the contrary, the department of administration, upon terms and procedures it deems favorable to the state, may sell the Rochester state hospital buildings and adjoining land directly to the county of Olmsted and other interested counties at any time for a sum the department deems reasonable.

(b) Economic Security (546,000)

$188,000 of this reduction is in the vocational rehabilitation program.
$265,000 of this reduction is from the weatherization program.
$93,000 of this reduction is a general reduction of appropriations to the commissioner of economic security.

(c) Corrections (500,000)

$200,000 of this reduction is in Community Corrections Act subsidies.
$300,000 of this reduction is in prison industries subsidies.

(d) Health (1,528,000)

$143,000 of this reduction is in community health services.
$250,000 of this reduction is a general reduction of appropriations to the commissioner of health.
$1,135,000 of this reduction shall be accomplished by the cancelation of this amount from the appropriation made available to the city of Cloquet for use in constructing a

water filtration system pursuant to Laws 1975, chapter 437, article XI, section 2, subdivision 2, or for developing an alternative permanent source of drinking water pursuant to Laws 1981, chapter 354, section 3, as repealed by Laws 1981, Third Special Session chapter 2, article I, section 76, and reenacted by Laws 1982, chapter 394. The sum of $650,000 is appropriated for these purposes for the period beginning July 1, 1983 and ending June 30, 1986.
Notwithstanding any law to the contrary, the commissioner of health may use federal preventive and personal health services block grant money to maintain existing public health programs that would otherwise be eliminated due to this reduction.

Subd. 5. [RELATION TO PRIOR REDUCTIONS.] *The appropriation reductions in this section are in addition to the general reductions, general staff reductions, and other reductions made in previous appropriation acts.*

Sec. 3. Minnesota Statutes 1982, section 11A.08, subdivision 1, is amended to read:

Subdivision 1. [MEMBERSHIP.] There is created an investment advisory council consisting of ten members who are experienced in general investment matters and who shall be appointed by the state board,; the commissioner of finance **and**; the executive directors of each of the following: the Minnesota state retirement system, the public employees retirement association, the teachers retirement association**, and**; a retiree currently receiving benefits from the post retirement investment fund **who**; *and two public employees who are active members of funds whose assets are invested by the state board. The retiree and the public employees* shall be appointed by the governor for a four year **term** *terms.*

Sec. 4. Minnesota Statutes 1982, section 256B.03, subdivision 2, is amended to read:

Subd. 2. [LIMIT ON ANNUAL INCREASE TO LONG-TERM CARE PROVIDERS.] Notwithstanding the provisions of sections 256B.42 to 256B.48, Laws 1981, Chapter 360, Article II, Section 2, or any other provision of chapter 360, and rules promulgated under those sections, rates paid to a skilled nursing facility or an intermediate care facility, including boarding care facilities and supervised living facilities, except state owned and operated facilities, for rate years beginning during the biennium ending June 30, 1983, shall not exceed by more than ten percent the final rate allowed to the facility for the preceding rate year. *For purposes of this section, "final rate" means the rate established after any adjustment by the commissioner, including but not limited to adjustments resulting from cost report reviews, field audits, and computations of unimplemented cost changes. Regardless of any rate appeal, the rate established shall be the rate paid and shall remain in effect until final resolution of the appeal, subsequent desk or field audit adjustment, notwithstanding any provision of law or rule to the contrary.*

Notwithstanding provisions of section 256B.45, subdivision 1, the commissioner shall not increase the percentage for investment allowances.

Sec. 5. Minnesota Statutes 1982, section 256E.06, subdivision 3, is amended to read:

Subd. 3. [PAYMENTS TO COUNTIES.] The commissioner of public welfare shall make payments for community social services to each county in four installments per year. The commissioner of public welfare may certify the payments for the first three months of a calendar year based on estimates of the unduplicated number of persons receiving AFDC, general assistance and medical assistance for the prior year. The following three payments shall be adjusted to reflect the actual unduplicated number of persons who received AFDC, general assistance and medical assistance as required by subdivision 1. *The commissioner shall ensure that the pertinent payment of the allotment for that quarter is made to each county on the first working day after the end of each quarter of the calendar year, except for the last quarter of the calendar year. The commissioner shall ensure that each county receives its payment of the allotment for that quarter no later than the last working day of that quarter. This scheduling of payments does not require compliance with subdivision 10.*

Sec. 6. [COMMUNITY SOCIAL SERVICES; ONE-TIME PAYMENT.]

The payment described in section 8 for services rendered during the quarter extending from April 1, 1983 to June 30, 1983 shall be made on the first working day of July, 1983.

Sec. 7. [356.62] [PAYMENT OF EMPLOYEE CONTRIBUTION.]

For purposes of any public pension plan, as defined in section 356.60, subdivision 1, clause (a), each employer *shall pick up the employee contributions required pursuant to law or the pension plan for all salary payable after December 31, 1982. If the United States Treasury department or a federal court rules that pursuant to section 414(h) of the Internal Revenue Code of 1954, as amended, that these picked up contributions, are not includable in the employee's adjusted gross income until they are distributed or made available, then these picked up contributions shall be treated as employer contributions in determining tax treatment pursuant to the Internal Revenue Code of 1954, as amended, and the employer shall discontinue withholding federal income taxes on the amount of these contributions. The employer shall pay these picked up contributions from the same source of funds as is used to pay the salary of the employee. The employer shall pick up these employee contributions by a reduction in the cash salary of the employee. Employee contributions that are picked up shall be treated for all purposes of the public pension plan in the same manner and to the same extent as employee contributions that were made prior to the date on which the employee contributions pick up began. For purposes of this section, "employee" means any person covered by a public pension plan. For purposes of this section, "employee contributions" include any sums deducted from the employee's salary or wages or otherwise paid in lieu thereof, regardless of whether they are denominated contributions by the public pension plan.*

For any calendar year in which withholding has been reduced pursuant to this section, the association or agency administering the plan shall supply each employee and the commissioner of revenue with an information return indicating the amount of the employer's picked-up contributions for the calendar year that were not subject to withholding.

This return shall be provided to the employee not later than January 31 of the succeeding calendar year. The commissioner of revenue shall prescribe the form of the return and the provisions of sections 290.41 and 290.42 shall apply to the extent not inconsistent with the provisions of this section.

[The immediately foregoing Section 7 was amended during the 1983 legislative Session, subsequent to the Three-Judge District Court trial Panel's decision in this matter, to read as follows:

Sec. 7. [356.62] PAYMENT OF EMPLOYEE CONTRIBUTION.

For purposes of any public pension plan, as defined in section 356.60, subdivision 1, clause (a), each employer shall pick up the employee contributions required pursuant to law or the pension plan for all salary payable after December 31, 1982. If the United States Treasury department or a federal court rules that pursuant to section 414(h) of the Internal Revenue Code of 1954, as amended, that these picked-up contributions, are not includable in the employee's adjusted gross income until they are distributed or made available, then these picked-up contributions shall be treated as employer contributions in determining tax treatment pursuant to the Internal Revenue Code of 1954, as amended, and the employer shall discontinue withholding federal income taxes on the amount of these contributions. The employer shall pay these picked-up contributions from the same source of funds as is used to pay the salary of the employee. The employer shall pick up these employee contributions by a reduction in the cash salary of the employee. Employee contributions that are picked up shall be *treated for all purposes of the public pension plan in the same manner and to the same extent as employee contributions that were made prior to the date on which the employee contributions pick up began. For purposes of this section, "employee" means any person covered by a public pension plan. For purposes of this section, "employee contributions" include any sums deducted from the employee's salary or wages or otherwise paid in lieu thereof, regardless of whether they are denominated contributions by the public pension plan.*

For any calendar year in which withholding has been reduced pursuant to this section, the association or agency administering the plan shall supply each employee and the commissioner of revenue with an information return indicating the amount of the employer's picked-up contributions for the calendar year that were not subject to withholding. This return shall be provided to the employee not later than January 31 of the succeeding calendar year. The commissioner of revenue shall prescribe the form of the return and the provisions of sections 290.41 and 290.42 shall apply to the extent not inconsistent with the provisions of this section.

Sec. 8. [VOLUNTARY UNPAID LEAVE OF ABSENCE.]

During the period ending June 30, 1983, in order to encourage employees to take unpaid leaves of absence, each appointing authority in the executive branch of state government shall allow its employees to continue to accrue vacation and sick leave, be eligible for paid holidays and insurance benefits, and accrue seniority and length of service credits during up to 160 hours of unpaid leave of *absence as if the employees had been actually employed during the time of the leave. If a leave of absence is for one full pay period or longer, any holiday pay shall be included in the first payroll warrant after return from the leave of absence. Each appointing authority shall encourage its employees to request voluntary unpaid leaves of absence. The appointing authority shall attempt to grant requests for unpaid leaves of absence, consistent with the need to continue efficient operation of the agency. However, each appointing authority shall retain discretion to grant or refuse to grant requests for leaves of absence and to schedule and cancel leaves, subject to applicable provisions of collective bargaining agreements and compensation plans. Approval of leave under this section shall be given by the appointing authority in writing, with a copy to the commissioner of finance, who shall reduce the agency's allotment by the amount of the resulting savings. It is estimated that this will result in cancelation to the general fund of $4,500,000 by June 30, 1983.*

Sec. 9. [EFFECTIVE DATE.]

Except as otherwise provided in this article, article I and this article are effective are day following final enactment. Section 5 is effective February 1, 1983.

ARTICLE III: EDUCATION AIDS

Section 1. Minnesota Statutes 1982, section 121.904, subdivision 4a, is amended to read:

Subd. 4a. [LEVY RECOGNITION.] (a) "School district tax settlement revenue" means the current, delinquent, and manufactured home property tax receipts collected by the county and distributed to the school district, including distributions made pursuant to section 279.37, subdivision 7, and excluding the amount levied pursuant to section 275.125, subdivision 9a, and Laws 1976, Chapter 20, Section 4.

(b) In June of each year, the school district shall recognize as revenue, in the fund for which the levy was made, the lesser of:

(1) the June and July school district tax settlement revenue received in that calendar year; or

(2) the sum of the state aids and credits enumerated in section 124.155, subdivision 2 which are for the fiscal year payable in that fiscal year; or

(3) **one-sixth** *thirty-two percent* of the amount of the spread levy in the current calendar year, not including levy portions that are assumed by the state, which remains after subtracting, by fund, the amounts levied for the following purposes:

(i) reducing or eliminating projected deficits in the appropriated fund balance accounts for unemployment insurance and bus purchases;

(ii) statutory operating debt pursuant to section 275.125, subdivision 9a, and Laws 1976, Chapter 20, Section 4; and

(iii) retirement and severance pay pursuant to section 271.125, subdivision 6a, and Laws 1975, Chapter 261, Section 4;

(iv) amounts levied for bonds issued and interest thereon, amounts levied for debt service loans and capital loans, and amounts levied pursuant to section 275.125, subdivision 14a.

(c) In July of each year, the school district shall recognize as revenue that portion of the school district tax settlement revenue received in that calendar year and not recognized as revenue for the previous fiscal year pursuant to clause (b).

(d) All other school district tax settlement revenue shall be recognized as revenue in the fiscal year of the settlement. Portions of the school district levy assumed by the state, including prior year adjustments and the amount to fund the school portion of the reimbursement made pursuant to section 273.425, shall be recognized as revenue in the fiscal year beginning in the calendar year for which the levy is payable.

Sec. 2. Minnesota Statutes 1982, section 124.155, subdivision 1, is amended to read:

Subdivision 1. [AMOUNT OF ADJUSTMENT.] Beginning with fiscal year 1984 and each year thereafter, state aids and credits enumerated in subdivision 2 payable to any school district in a particular fiscal year for that fiscal year shall be adjusted, in the order listed, by an amount equal to (1) the amount the district recognized as revenue for the prior fiscal year pursuant to section 121.904, subdivision 4a, clause (b), *as amended by article III, section 1 of this act;* minus (2) the amount the district recognizes as revenue for the current fiscal year pursuant to section 121.904, subdivision 4a, clause (b), *as amended by article III, section 1 of this act.* Any loan amount authorized from the cash flow loan fund or payment from the permanent school fund shall not be adjusted pursuant to this section. The school district shall be notified of the amount of the adjustment made to each payment pursuant to this section.

Sec. 3. Minnesota Statutes 1982, section 124.155, subdivision 2, is amended to read:

Subd. 2. [SUBTRACTION FROM AIDS.] The amount specified in Laws 1981, Third Special Session Chapter 2, Article 4, Section 3, Subdivision 2, as amended by Laws 1982, Chapter 548, Article 7, Section 7, *as further amended by article III, section 4 of this act* shall be subtracted from the following state aids and credits in the order listed in fiscal year 1983. The amount specified in subdivision 1 shall be used to adjust the following state aids and credits in the order listed:

(a) Foundation aid as authorized in section 124.212, subdivision 1;

(b) Secondary vocational aid authorized in section 124.573;

(c) Special education aid authorized in section 124.32;

(d) Secondary vocational aid for handicapped children authorized in section 124.574;

(e) Gifted and talented aid authorized in section 124.247;

(f) Aid for pupils of limited English proficiency authorized in section 124.273;

(g) Aid for improved learning programs authorized in section 124.251;

(h) Aid for chemical use programs authorized in section 124.246;

(i) Transportation aid authorized in section 124.225;

(j) School lunch aid authorized in section 124.646;

(k) *(j)* Community education programs aid authorized in section 124.271;

(l) *(k)* Adult education aid authorized in section 124.26;

(m) *(l)* Capital expenditure equalization aid authorized in section 124.245;

(n) *(m)* Homestead credit authorized in section 273.13, subdivisions 6, 7, and 14a;

(o) *(n)* Reduced assessment credit authorized in section 273.139;

(p) *(o)* Wetlands credit authorized in section 273.115;

(q) *(p)* Native prairie credit authorized in section 273.116; and

(r) *(q)* Attached machinery aid authorized in section 273.138, subdivision 3.

The commissioner of education shall schedule the timing of the reductions from state aids and credits specified in Laws 1981, Third Special Session Chapter 2, Article 4, Section 3, Subdivision 2, as amended by Laws 1982, Chapter 548, Article 7, Section 7, *as further amended by article*

III, section 4 of this act, and the adjustments to state aids and credits specified in subdivision 1, as close to the end of the fiscal year as possible and in such a manner that will minimize the impact of Laws 1981, Third Special Session Chapter 2, Article 4, as amended, on the cash flow needs of the school districts.

Sec. 4. Laws 1981, Third Special Session chapter 2, article IV, section 3, subdivision 2, as amended by Laws 1982, chapter 548, article VII, section 7, as amended to read:

Subd. 2. [AMOUNT OF REDUCTION.] State aids and credits enumerated in **section 9 of this article** *section 124.155, subdivision 2* due any school district in fiscal year 1983 for the 1982-1983 school year shall be reduced in the order listed by the following amount: (1) the amount the district recognizes as revenue for fiscal year 1983 pursuant to section **3 of this article**, *121.904, subdivision 4a* clause (b), *as amended by article III, section 1 of this act,* minus (2) the amount the district received pursuant to Minnesota Statutes **1981 Supplement** *1982* section 275.125, subdivision 2d. The school district shall be notified of the amount, by fund, of the reductions to each aid payment made according to this section.

Sec. 5. Laws 1981, Third Special Session chapter 2, article IV, section 5, subdivision 3, as amended by Laws 1982, chapter 548, article VII, section 11, is amended to read:

Subd. 3. [APPROPRIATION.] There is appropriated from the general fund to the department of education for the cash flow loan fund the sum of **$35,000,000** *$70,000,000.* This sum shall be transferred to the cash flow loan fund as needed.

Sec. 6. [ELEMENTARY-SECONDAY APPROPRIATIONS REDUCTION.]

In addition to the appropriations reductions made in Laws 1981, Third Special Session Chapter 2, article II, section 2 and Laws 1982, chapter 548, article VI, section 27, the general fund appropriations in Laws 1981, chapter 358 for fiscal year 1983 are further reduced in the amount of $15,558,000. The appropriations reduction in this section is from the portion of the appropriations provided for the current year and not from the portion of the appropriations provided for the prior year. The commissioner of education shall apportion the reduction in this section among school districts, public library systems, multi-type library systems, and educational cooperative service units in the same manner in which he apportioned the education aid reductions made in fiscal year 1981 pursuant to Minnesota Statutes 1980, sections 16A.15, subdivision 1, and 124.77, because funds in the state treasury were insufficient. Appropriations for post-secondary vocational education in Laws 1981, chapter 358, article V, section 48, subdivisions 2, 3, 4, 5, and 6 shall not be reduced pursuant to this section.

In addition to the appropriations reductions made in cannot be made for any school district because it is not entitled to any more state aid payments in fiscal year 1983, the reduction shall be made from the district's aids in fiscal year 1984.

Sec. 7. [POST-SECONDARY VOCATIONAL EDUCATION APPROPRIATIONS REDUCTION.]

In addition to the appropriations reductions made in Laws 1981, Third Special Session chapter 2, article II, *section 2 and Laws 1982, chapter 548, article VI, section 27, the general fund appropriations for post-secondary vocational education in Laws 1981, chapter 358, article V, section 48, subdivisions 2, 3, 4, 5, and 6 for fiscal year 1983 are further reduced in the amount of $1,442,000. The appropriations reduction in this section is from the portion of the appropriations provided for the current year and not from the portion of the appropriations provided for the prior year. The commissioner of education shall apportion the reduction in this section among recipient school districts in the same manner in which he apportioned the education aid reductions made in fiscal year 1981 pursuant to Minnesota Statutes 1980, sections 16A.15, subdivision 1, and 124.77, because funds in the state treasury were insufficient.*

Sec. 8. [AID PAYMENT DELAYS.]

Notwithstanding the provisions of Minnesota Statutes, sections 16A.15 and 124.11 or any other law to the contrary between December 15, 1982 and June 30, 1983 the commissioner of education may delay payments of some or all state aids, payments, reimbursements, and fund transfers to some or all school districts, area vocational-technical institutes, public library systems, multitype library systems, educational cooperative service units, or regional management information systems. The commissioner shall consider the cash flow requirements of each individual recipient when determining whether to delay payments of any aid, payments, reimbursements, or fund transfers. Any payments that are delayed shall be paid by the commissioner no later than June 30, 1983. A recipient may appeal the delay of any payments to the commissioner of education.

Sec. 9. [EFFECTIVE DATE.]

Sections 1 to 8 of this article are effective the day following final enactment.

ARTICLE IV: AID REDUCTIONS

Section 1. [REDUCTIONS IN AID PAYMENTS TO LOCAL GOVERNMENTS.]

Subdivision 1. Warrants drawn for the purpose of making payments in December 1982, to counties, cities, towns, and special taxing districts, except the metropolitan transit commission, for:

(a) payments of local government aid pursuant to section 477A.015,

(b) payments of attached machinery aids pursuant to section 273.138, subdivisions 2 and 5, and

(c) payments pursuant to sections 273.139 and 273.13, subdivision 15a, to replace revenue lost as a result of section 273.115, 273.116, and 273.13, subdivisions 6, 6a, 7, 7d, or 14a, shall be reduced in accordance with subdivision 2.

Subd. 2. The warrants specified in subdivision 1 shall be reduced in the following manner:

(a) Determine the sum of each governmental unit's levy limitation for taxes payable in 1982, as determined by the department of revenue pursuant to section 275.51, subdivision 3e, and its total local government aid amount for 1982, if any, pursuant to section 477A.015 and 477A.03.

(b) Determine separately the sums of the factors calculated in (a) for all counties, all cities, all towns, and all

special taxing districts, except the metropolitan transit commission, in the state.

(c) Determine the proportion that each unit's factor as determined in (a) bears to the sum determined in (b) for all units of its type.

(d) Multiply the proportion determined in (c) by $7,480,000 in the case of counties, $5,780,000 in the case of cities, $500,000 in the case of towns, and $330,000 in the case of special taxing districts.

The amount calculated in (d) shall be the amount by which December 1982 warrants will be reduced.

Subd. 3. For the purpose of the computations specified in subdivision 2, the levy limitation of any governmental unit which elected to levy for indebtedness within its levy limitation for taxes payable in 1982, pursuant to Minnesota Statutes 1981 Supplement, section 275.51, subdivision 3e, clause (g), shall be reduced by an amount equal to the amount by which the limitation was increased for indebtedness.

Subd. 4. For the purpose of the computations specified in subdivision 2, each town with population less than 5,000 according to the 1980 federal census shall be assumed to have a 1982 levy limitation equal to its certified levy amount for taxes payable in 1982.

Subd. 5. For the purpose of the computations specified in subdivision 2, the counties of Hennepin, Ramsey, and St. Louis shall be treated as if they had local government aid amounts of $8,253,000, $4,031,000, and $1,948,000, respectively.

Sec. 2. [PAYMENT DELAY.]

The December 15 payments pursuant to Minnesota Statutes, sections 273.13, subdivision 15a, 273.138, 273.139, and 477A.015 for calendar year 1982 and shall be made on or before December 22, 1982.

Sec. 3. [EFFECTIVE DATE]

Sections 1 and 2 are effective the day following final enactment.

ARTICLE V: INCOME TAX

Section 1. Minnesota Statutes 1982, section 290.01, subdivision 20a, is amended to read:

Subd. 20a. [MODIFICATIONS INCREASING FEDERAL ADJUSTED GROSS INCOME.] There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than Minnesota or a political subdivision of any other state exempt from federal income taxes under the Internal Revenue Code of 1954;

(2) A business casualty loss if the taxpayer elected to deduct the loss on the current year's federal income tax return but had deducted the loss on the previous year's Minnesota income tax return;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to

purchase or carry securities the income from which is exempt from tax under this chapter, to the extent deductible in determining federal adjusted gross income;

(5) Amounts received as reimbursement for an expense of sickness or injury which was deducted in a prior taxable year to the extent that the deduction for the reimbursed expenditure resulted in a tax benefit;

(6) The amount of any federal income tax overpayment for any previous taxable year, received as refund or credited to another taxable year's income tax liability, proportionate to the percentage of federal income tax that was claimed as a deduction in determining Minnesota income tax or the previous taxable year. The amount of the federal income tax overpayment shall be reported only to the extent that the amount resulted in a reduction of the tax imposed by this chapter.

The overpayment refund or credit, determined with respect to a husband and wife on a joint federal income tax return for a previous taxable year, shall be reported on joint, combined, or separate Minnesota income tax returns. In the case of combined or separate Minnesota returns, the overpayment shall be reported by each spouse proportionately according to the relative amounts of federal income tax claimed as a deduction on his or her combined or separate Minnesota income tax return for such previous taxable year;

(7) In the case of a change of residence from Minnesota to another state or nation, the amount of moving expenses which exceed total reimbursement and which were therefore deducted in arriving at federal adjusted gross income;

(8) The amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954 to the extetnt of the credit under section 38 of the Internal Revene Code of 1954 that was previously allowed as a deduction under subdivision 20b, clause (7);

(9) Expenses and losses arising from a farm which are not allowable under section 290.29, subdivision 29;

(10) Expenses and depreciation attributable to substandard buildings disallowed by section 290.101;

(11) The amount by which the gain determined pursuant to section 41.59, subdivision 2 exceeds the amount of such gain included in federal adjusted gross income;

(12) To the extent deducted in computing the taxpayer's federal adjusted gross income for the taxable year, losses recognized upon transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

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(13) Interest income from qualified scholarship funding bonds as defined in section 103(e) of the Internal Revenue Code of 1954, if the nonprofit corporation is domiciled outside of Minnesota;

(14) Exempt-interest dividends, as defined in section 852(b)(5)(A) of the Internal Revenue Code of 1954, not included in federal adjusted gross income pursuant to section 852(b)(5)(B) of the Internal Revenue Code of 1954, except for that portion of exempt-interest dividends derived from interest income on obligations of the state of Minne-

sota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;

(15) The amount of any excluded gain recognized by a trust on the sale or exchange of property as defined in section 641(c)(1) of the Internal Revenue Code of 1954;

(16) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any gain, from the sale or other disposition of property having a lower adjusted basis for Minnesota income tax purposes than for federal income tax purposes. This modification shall not exceed the difference in basis. If the gain is considered a long term capital gain for federal income tax purposes, the modification shall be limited to 40 percent of the portion of the gain. This modification is limited to property that qualified for the energy credit contained in section 290.06, subdivision 14, and to property acquired in exchange for the release of the taxpayer's marital rights contained in section 290.14, clause (7);

(17) The amount of any loss from a source outside of Minnesota which is not allowed under section 290.17 including any capital loss or net operating loss carryforwards or carrybacks resulting from the loss;

(18) The amount of a distribution from an individual housing account which is to be included in gross income as required under section 290.08, subdivision 25;

(19) To the extent deducted in computing the taxpayer's federal adjusted gross income, interest, taxes and other expenses which are not allowed under section 290.10, clause (9) or (10);

(20) To the extent excluded from federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of contributions made by the city manager or administrator which is equal to the amount which would have been the city manager's or administrator's employee contribution pursuant to section 353.27, subdivision 2, if he were a member of the public employees retirement association;

(21) The deduction for two-earner married couples provided in section 221 of the Internal Revenue Code of 1954;

(22) Interest on all-savers certificates which is excluded under section 128 of the Internal Revenue Code of 1954;

(23) Losses from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax;

(24) Expenses and depreciation attributable to property subject to Laws 1982, Chapter 523, Article 7, Section 3 which has not been registered;

(25) The amount of contributions to an individual retirement account, simplified employee pension plan, or self-employed retirement plan which is allowed under sections 311 and 312 of Public Law Number 97-34 to the extent those contributions were not an allowable deduction prior to the enactment of that law; **and**

(26) To the extent deducted in computing federal adjusted gross income, living expenses of a member of con-

gress in excess of that allowable under section 290.09, subdivision 2, clause (a)(3)*; and*

(27) To the extent not included in the taxpayer's federal adjusted gross income, the amount of any contributions to a qualified pension plan, designated as employee contributions but which the employing unit picks up and which are treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code of 1954.

Sec. 2. Minnesota Statutes 1982, section 290.01, subdivision 20b, is amended to read:

Subd. 20b [MODIFICATIONS REDUCING FEDERAL ADJUSTED GROSS INCOME.] There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to 40 per centum of the portion of the gain. This modification shall not be applicable if the difference in basis is due to disallowance of depreciation pursuant to section 290.101.

(3) Income from the performance of personal or professional services which is subject to the reciprocity exclusion contained in section 290.081, clause (a);

(4) Losses, not otherwise reducing federal adjusted gross income assignable to Minnesota, arising from events or transactions which are assignable to Minnesota under the provisions of sections 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks or out of state loss carryforwards resulting from the losses, and including any farm loss carryforwards or carrybacks;

(5) If included in federal adjusted gross income, the amount of any credit received, whether received as a refund or credit to another taxable year's income tax liability, pursuant to chapter 290A, and the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether the amount is received as a refund or credited to another taxable year's income tax liability;

(6) To the extent included in federal adjusted gross income, or the amount reflected as the ordinary income portion of a lump sum distribution under section 402(e) of the Internal Revenue Code of 1954, notwithstanding any other law to the contrary, the amount received by any person (i) from the United States, its agencies or instrumentalities, the Federal Reserve Bank or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, or a Minnesota volunteer firefighter's relief association, by way of payment as a pension, public employee retirement benefit, or any combination thereof, or (ii) as a retirement or survivor's benefit made from a plan qualifying under section 401, 403, 404, 405, 408, 409 or 409A of the Internal Revene Code of 1954. The maximum amount of this subtraction shall be $11,000 less the amount by which

the individual's federal adjusted gross income, plus the ordinary income portion of a lump sum distribution as defined in section 402(e) of the Internal Revenue Code of 1954, exceeds $17,000. In the case of a volunteer firefighter who receives an involuntary lump sum distribution of his pension or profit sharing plan included in federal adjusted subtraction shall be $11,000; this subtraction shall not be reduced by the amount of the individual's federal adjusted gross income in excess of $17,000;

(7) The amount of any credit to the taxpayer's federal tax liability under section 38 of the Internal Revenue Code of 1954 but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(8) To the extent included in the taxpayer's federal adjusted gross income for the taxable year, gain recognized upon a transfer of property to the spouse or former spouse of the taxpayer in exchange for the release of the spouse's marital rights;

(9) The amount of any distribution from a qualified pension or profit sharing plan included in federal adusted gross income in the year of receipt to the extent of any contribution not previously allowed as a deduction by reason of a change in federal law which was not adopted by Minnesota law for a taxable year beginning in 1974 or later;

(10) Interest, including payment adjustment to the extent that it is applied to interest, earned by the seller of the property on a family farm security loan executed before January 1, 1986 that is guaranteed by the commissioner of agriculture as provided in sections 41.51 to 41.60;

(11) The first $3,000 of compensation for personal services in the armed forces of the United States or the United Nations, and the next $2,000 of compensation for personal services in the armed forces of the United States or the United Nations wholly performed outside the state of Minnesota. This modification does not apply to compensation defined in subdivision 20b, clause (6);

(12) The amount of any income earned for personal services rendered outside of Minnesota prior to the date when the taxpayer became a resident of Minnesota. This modification does not apply to compensation defined in subdivision 20b, clause (6);

(13) In the case of wages or salaries paid or incurred on or after January 1, 1977, the amount of any credit for employment of certain new employees under sections 44B and 51 to 53 of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(14) In the case of work incentive program expenses paid or incurred on or after January 1, 1979, the amount of any credit for expenses of work incentive programs under sections 40, 50A and 50B of the Internal Revenue Code of 1954 which is claimed as a credit against the taxpayer's federal tax liability, but only to the extent that the credit is connected with or allocable against the production or receipt of income included in the measure of the tax imposed by this chapter;

(15) Unemployment compensation to the extent in-

cludible in gross income for federal income tax purposes under section 85 of the Internal Revenue Code of 1954;

(16) To the extent included in federal adjusted gross income, severance pay that may be treated as a lump sum distribution under the provisions of section 290.032, subdivision 5;

(17) The amount of any income or gain which is not assignable to Minnesota under the provisions of section 290.17;

(18) Minnesota exempt-interest dividends as provided by subdivision 27;

(19) A business casualty loss which the taxpayer elected to deduct on the current year's Minnesota income tax return but did not deduct on the current year's federal income tax return;

(20) To the extent included in federal adjusted gross income, in the case of a city manager or city administrator who elects to be excluded from the public employees retirement association and who makes contributions to a deferred compensation program pursuant to section 353.028, the amount of payments from the deferred compensation program equivalent to the amount of contributions taxed under subdivision 20a, clause (20);

(21) Contributions to and interest earned on an individual housing account as provided by section 290.08, subdivision 25;

(22) Interest earned on a contract for deed entered into for the sale of property for agricultural use if the rate of interest set in the contract is no more than nine percent

per year for the duration of the term of the contract. This exclusion shall be available only if (1) the purchaser is an individual who, together with his spouse and dependents, has a total net worth valued at less than $150,000 and (2) the property sold under the contract is farm land as defined in section 41.52, subdivision 6 of no more than 1,000 acres that the purchaser intends to use for agricultural purposes. Compliance with these requirements shall be stated in an affidavit to be filed with the first income tax return on which the taxpayer claims the exclusion provided in this clause. Upon request accompanied by the information necessary to make the determination, the commissioner shall determine whether interest to be paid on a proposed transaction will qualify for this exclusion; the determination shall be provided within 30 days of receipt of the request, unless the commissisoner finds it necessary to obtain additional information, or verification of the information provided, in which case the determination shall be provided within 30 days of receipt of the final item of information or verification. The exclusion provided in this clause shall apply to interest earned on contracts for deed entered into after December 31, 1981 and before July 1, 1983;

(23) The penalty on the early withdrawal of an all-savers certificate as provided in section 128(e) of the Internal Revenue Code of 1954 to the extent that the interest was included in income under subdivision 20a, clause (22); **and**

(24) Income from the business of mining as defined in section 290.05, subdivision 1, clause (a) which is not subject to the Minnesota income tax*; and*

(25) To the extent included in federal adjusted gross

income, distributions from a qualified governmental pension plan which represent a return of designated employee contributions to the plan and which contributions were included in gross income pursuant to subdivision 20a, clause (27).

Sec. 3. Minnesota Statutes 1982, section 290.06, subdivision 2e, is amended to read:

Subd. 2e. [ADDITIONAL INCOME TAX.] In addition to the tax computed pursuant to subdivisions 2c and 2d or subdivision 3d, there is hereby imposed an additional income tax on individuals, estates, and trusts, other than those taxable as corporations. The additional tax shall be computed by applying the following rates to the tax computed pursuant to subdivision 3d or, in the case of an individual who does not qualify for the low income alternative tax and estates and trusts, the tax computed pursuant to subdivisions 2c and 2d and sections 290.032 and 290.091 less the credits allowed by sections 290.06, subdivisions 3e, 3f, 9, 9a, 11 and 14; and 290.081.

(1) For taxable years beginning after December 31, 1981, but before January 1, 1983, seven percent;

(2) For taxable years beginning after December 31, 1982, but before January 1, 1984, **3.5** *5* percent,.

On October 1, 1983 the commissioner of finance shall determine the amount of the state's unrestricted general fund balance at the close of the 1982-1983 biennium. If this amount is more than $150,000,000, the commissioner shall reduce the rate of the surtax in effect for taxable years beginning after December 31, 1982 and before January 1, 1984, so that the amount of revenue raised by the surtax results in a fund balance of no more than $150,000,000, provided that the rate so determined shall be rounded up-

ward to the next one-tenth of one percent and no adjustment shall be required if the change in the rate of the surtax would be less than one-tenth of one percent.

Sec. 4. [ADJUSTMENT TO WITHHOLDING AND DECLARATIONS.]

For taxable years beginning after December 31, 1982, but before January 1, 1984, the commissioner of revenue shall adjust the withholding tables, notwithstanding section 290.92, subdivision 2a, so that the additional tax imposed by section 3 for the entire year is withheld and remitted by employers as if the additional tax were imposed at a rate of ten percent during the first six months of the taxable year.

For the same period, the commissioner shall require that declarations filed for the first six months of the taxable year by individuals shall include the additional tax imposed by section 3.

Sec. 5. [REPEALER.]

Laws 1981, Third Special Session chapter 2, article III, section 5, is repealed.

Sec. 6. [EFFECTIVE DATE.]

Sections 1, 2, 3, and 4 are effective for taxable years beginning after December 31, 1982. Section 5 is effective January 1, 1983. D

ARTICLE VI: SALES TAX

Section 1. Minnesota Statutes 1982, section 297A.01, subdivision 3, is amended to read:

Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

(a) Any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally,

and the leasing of or the granting of a license to use or consume tangible personal property other than manufactured homes used for residential purposes for a continuous period of 30 days or more, for a consideration in money or by exchange or barter;

(b) The production, fabrication, printing or processing of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production, fabrication, printing or processing;

(c) The furnishing, preparing or serving for a consideration of food, meals or drinks, not including hospitals, sanatoriums, nursing homes or senior citizens homes, meals or drinks purchased for and served exclusively to individuals who are 60 years of age or over and their spouses or to the handicapped and their spouses by governmental agencies, nonprofit organizations, agencies, or churches or pursuant to any program funded in whole or in part through 42 USCA sections 3001 through 3045, wherever delivered, prepared or served, meals and lunches served at public and private schools, universities or colleges, or the occasional meal thereof by a charitable or church organization. Notwithstanding section 297A.25, subdivision 1, clause (a), taxable food or meals include, but is not limited to, the following:

(i) heated food or drinks;

(ii) sandwiches prepared by the retailer;

(iii) single sales of prepackaged ice cream or ice milk novelties prepared by the retailer;

(iv) hand-prepared or dispensed ice cream or ice milk products including cones, sundaes, and snow cones;

(v) soft drinks and other beverages prepared or served by the retailer;

(vi) gum;

(vii) ice;

(viii) all food sold in vending machines;

(ix) party trays prepared by the retailers; and

(x) all meals and single servings of packaged snack food, single cans or bottles of pop, sold in restaurants and bars;

(d) The granting of the privilege of admission to places of amusement or athletic events and the privileges of use of amusement devices or athletic facilities;

(e) The furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel or trailer camp and of the granting of any similar license to use real property other that the renting or leasing therefor for a continuous period of 30 days or more;

(f) The furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state, or local exchange telephone service and intrastate toll service **except such service provided by means of coin operated telephones;** the tax imposed on amounts paid for telephone services is the liability of and shall be paid by the person paying for the services. Sales by municipal corporations in a proprietary capacity are included in the provisions of this clause. The furnishing of water and sewer services for residential use shall not be considered a sale;

(g) The furnishing for a consideration of cable television services, including charges for basic monthly service, charges for monthly premium service, and charges for any other similar cable television services.

Section. 2. Minnesota Statutes 1982, section 297A.02, is amended to read:

297A.02 [IMPOSITION OF TAX.]

Subdivision 1. [GENERALLY.] Except as otherwise provided in this chapter, there is hereby imposed an excise tax of **four** *five* percent of the gross receipts from sales at retail, as hereinbefore defined, made by any person in this state, except that for sales at retail made after **June 30, 1981** *December 31, 1982* and prior to July 1, 1983**, except sales of farm machinery,** the rate shall be **five** *six* percent.

Subd. 2. [FARM MACHINERY.] *Notwithstanding the provisions of subdivision 1, the rate of the excise tax imposed upon sales of farm machinery shall be four percent.*

Sec. 3. Minnesota Statutes 1982, section 297A.03, subdivision 2, is amended to read:

Subd. 2. It shall be unlawful for any retailer to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer, or that it will not be added to the sales price or that, if added, it or any part thereof will be refunded except that in computing the tax to be collected as the result of any transaction amounts of tax less than one-half of one cent may be disregarded and amounts of tax if one-half cent or more may be considered an additional cent. If the sales price of any sale at retail is

12 *nine* cents or less, or if the sales price of any sale at retail made after **June 30, 1981** *December 31, 1982* and prior to July 1, 1983, is **nine** *eight* cents or less, no tax shall be collected. Any person violating this provision shall be guilty of a misdemeanor.

Sec. 4. Minnesota Statutes 1982, section 297A.14, is amended to read:

297A.14 [USING, STORING OR CONSUMING TANGIBLE PERSONAL PROPERTY; ADMISSIONS; UTILITIES.]

For the privilege of using, storing or consuming in Minnesota tangible personal property, tickets or admissions to places of amusement and athletic events, electricity, gas and local exchange telephone service purchased for use, storage or consumption in this state, there is hereby imposed on every person in this state a use tax at the rate of **four** *five* percent of the sales price of sales at retail of any of the aforementioned items made to such person unless the tax imposed by section 297A.02 was paid on **said** *the* sales price, except that for sales at retail of any of the aforementioned items made after **June 30, 1981** *December 31, 1982* and prior to July 1, 1983**, except sales of farm machinery,** the rate shall be **five** *six* percent. *Notwithstanding the provisions of this paragraph, the rate of the use tax imposed upon the sales price of sales of farm machinery shall be four percent.*

Motor vehicles subject to tax under this section shall be taxed at the fair market value at the time of transport into Minnesota if such motor vehicles were acquired more than three months prior to its transport into this state.

Notwithstanding any other provisions of sections 297.01 to 297A.44 to the contrary, the cost of paper and ink products exceeding $100,000 in any calendar year, used or consumed in producing a publication as defined in section 297A.25, subdivision 1, clause (i) is subject to the tax imposed by this section.

Sec. 5. Minnesota Statutes 1982, section 297B.02, is amended to read:

297B.02 [TAX IMPOSED.]

There is hereby imposed an excise tax at the rate **provided in chapter 297A** *of five percent* on the purchase price of any motor vehicle purchased or acquired, either in or outside of the state of Minnesota, which is required to be registered under the laws of this state.

Sec. 6. [TRANSITION PROVISION.]

The increase in taxes for sales at retail made after December 31, 1982, provided in sections 2 and 4 shall not apply to the gross receipts from sales at retail made pursuant to bona fide written contracts, nor to lump sum or fixed price construction contracts which unconditionally vest the rights and obligations of the parties thereto and which do not make provision for allocation of future taxes, provided that the contracts were enforceable prior to January 1, 1983, and further provide that (1) in the case of construction contracts the delivery of tangible personal property used in performing the construction contract is made on or prior to December 31, 1983, and (2) in the case of all other contracts subject to this section the delivery of tangible personal property subject thereto is made on or prior to June 30, 1983.

Sec. 7. [EFFECTIVE DATE.]

Sections 1 to 5 are effective for sales made after December 31, 1982, subject to the provisions of section 6.

ARTICLE VII: FEDERAL UPDATE

Section 1. Minnesota Statutes 1982, section 290.09, subdivision 3, is amended to read:

Subd. 3. [INTEREST.] (a) All interest paid or accrued within the taxable year on indebtedness, except as hereinafter provided.

(b) Interest paid or accrued within the taxable year on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludable from gross income under sections 290.01, subdivisions 20 to 20f or 290.08, or shares of a regulated investment company which during the taxable year of the holder thereof distributes Minnesota exempt-interest dividends as defined in section 290.01, subdivision 27, or on indebtedness described in section 264(a)(2) and (3), (b) and (c) (relating to life insurance) of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982* shall not be allowed as a deduction.

(c) If personal property or educational services are purchased under a contract the provisions of section 163(b) of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982* shall apply.

(d) A cash basis taxpayer may elect to deduct interest as it accrues on a reverse mortgage loan as defined in section 47.58, subdivision 1, rather than when it is actually paid. This election must be made, if at all, in the first taxable year in which it is available to the cash basis taxpayer and, if made, shall be binding on the taxpayer for each subsequent taxable year until maturity of the loan.

(e) In the case of a taxpayer other that a corporation, the amount of interest on investment indebtedness allowable as a deduction shall be allowed and limited as set forth in section 163(d) of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*. The limitation prescribed in section 163(d)(1)(A) for married individuals who file separate returns shall also apply to married individuals who file separately on one return.

(f) A taxpayer may not deduct interest on indebtness incurred or continued to purchase or carry obligations or shares, or to make deposits or other investments, the interest on which is described in section 116(c) of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982* to the extent such interest is excludable from gross income under section 116 of the Internal Revenue Code of 1954 as amended through December **31, 1981** *1, 1982*. Interest and carrying costs in the case of straddles shall be treated as provided in section 263(g) of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982. The deduction of original issue discount shall be allowed as provided in section 163(e) of the Internal Revenue Code of 1954, as amended through December 1, 1982.*

(g) No deduction shall be allowed for interest on any registration-required obligation unless the obligation is in registered form as provided in section 163(f) of the Internal Revenue Code of 1954, as amended through December 1, 1982.

Sec. 2. Minnesota Statutes 1982, Section 290.09, Subdivision 7, is amended to read:

Subd. 7. There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence).

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) The term "reasonable allowance" as used in clause (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the commissioner, under any of the following methods:

(1) the straight line method.

(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) the sum of the years-digits method, and

(4) any other consistent method productive of an annual allowance, which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in (2). Nothing in this clause (b) shall be construed to limit or reduce an allowance otherwise allowable under clause (a).

(c) For purposes of this subdivision "reasonable allowance" shall include the accelerated cost recovery system provisions of section 168 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982,* except as provided in this subdivision. In the case of recovery property within the meaning of section 168 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982,* the term "reasonable allowance" as used in clause (a) shall mean 85 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 for property placed in service after December 31, 1980 and for taxable years beginning before January 1, 1982.

For taxable years beginning after December 31, 1981 the term reasonable allowance as used in clause (a) shall mean the following percent of the deduction allowed pursuant to section 68 of the Internal Revenue Code of 1954, as amended through December 31, 1981 *1, 1982:*

(1) For 3, 5 and 10 year property and for 15 year public utility property the allowable percentage is 83 percent and 80 percent for taxable years beginning after December 31, 1982.

(2) For 15 years real property the allowable percentage is 60 percent.

For property placed in service after December 31, 1980 the term "reasonable allowance" as used in clause (a) shall mean 100 percent of the deduction allowed pursuant to section 168 of the Internal Revenue Code of 1954 where the taxpayer **elects to use** *uses* the straight line method provided in section 168(b)(3) or a method provided in section 168(e)(2) of the Internal Revenue Code of 1914, as amended through December **31, 1981** *1, 1982*. For property placed in service after December 31, 1980 and for which the full amount of the deduction allowed under section 186 of the Internal Revenue Code of 1914, as amended through December **31, 1981** *1, 1982* has been allowed, the remaining depreciable basis in those assets for Minnesota purposes shall be a depreciation allowance computed by using the straight line method over the following number of years:

(1) 3 year property—1 year

(2) 5 year property—2 years.

(3) 10 year property—5 years.

(4) All 15 year property—7 years.

When an asset is exchanged for another asset including an involuntary conversion and under the provision of the Internal Revenue Code gain is not recognized in whole or in part on the exchange of the first asset, the basis of the second asset shall be the same as its federal basis provided that the difference in basis due to the limitations provided in this clause can be written off as provided in the preceding sentence.

The provisions of section 168(i)(4) of the Internal Revenue Code of 1954, as amended through December 1, 1982 shall apply to restrict research credit carrybacks and net operating loss carrybacks which are allocable to elected qualified leased property, notwithstanding section 290.068, subdivision 3, or 290.095, subdivision 3.

The modification provided in this clause shall apply before applying a limitation on farm losses as contained in subdivision 29.

(d) Paragraphs (2), (3), and (4) of clause (b) shall apply only in the case of property (other than intangible property) described in clause (a) with a useful life of three years or more.

(1) the construction, reconstruction, or erection of which is completed after December 31, 1958, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1958, or

(2) acquired after December 31, 1958, if the original use of such property commenced with the taxpayer and commences after such date.

(e) Where, under regulations prescribed by the commissioner, the taxpayer and the commissioner have, after June 30, 1959, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the commissioner in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail is served by the party to the agreement initiating such change.

(f) In the absence of an agreement under clause (e) containing a provision to the contrary, a taxpayer may at any time elect in accordance with regulations prescribed by the commissioner to change from the method of depreciation prescribed in clause (b) (2) to the method described in clause (b) (1).

(g) The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in this chapter for the purpose of determining the gain on the sale or other disposition of such property.

(B) [FIRST YEAR DEPRECIATION.] The term "reasonable allowance" as used in this subdivision may, at the election of the taxpayer, include an amount as provided under section 179 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*.

Sec. 3. Minnesota Statutes 1982, section 290.09, is amended by adding a subdivision to read:

Subd. 31. [CONSTRUCTION PERIOD INTEREST AND TAXES.] *No deduction shall be allowed for real property construction period interest and taxes except as provided in section 189 of the Internal Revenue Code of 1954, as amended through December 1, 1982, notwithstanding any other provision of this section to the contrary.*

Sec. 4. Minnesota Statutes 1982, section 290.131, subdivision 1, is amended to read:

Subdivision 1. [DISTRIBUTIONS OF PROPERTY.] The effects on recipients of a distribution by a corporation shall be governed by the provisions of sections 301 to 307 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*. However, in section 301(c)(3)(B) the date January 1, 1933 shall be substituted for March 1, 1913 when determining the amount of a distribution that is not taxable.

Sec. 5. Minnesota Statutes 1982, section 290.132, subdivision 1, is amended to read:

Subdivision 1. [TAXABILITY OF CORPORATION ON DISTRIBUTION.] No gain or loss shall be recognized to a corporation on the distribution, with respect to its stock as provided in section 311 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*.

The effect on earnings and profits shall be determined according to the provisions of section 312 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*. However, when determining earnings and profits in section 312(f) and (g), the date December 31, 1932 shall be substituted for February 28, 1913, and January 1, 1933 shall be substituted for March 1, 1913.

Sec. 6. Minnesota Statutes 1982, section 290.134, subdivision 1, is amended to read:

Subdivision 1. [GAIN OR LOSS TO SHAREHOLDERS IN CORPORATE LIQUIDATIONS.] The effects on recipients of corporate liquidations shall be governed by the provisions of sections 331 to 334 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*. However, in section 333(f)(2), the date December 31, 1932 shall be substituted for February 28, 1913 when determining accumulated earnings and profits.

Sec. 7. Minnesota Statutes1982, section 290.135, subdivision 1, is amended to read:

Subdivision 1. [GENERAL RULE.] Gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation as provided in sections 336 to 346 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982*.

Sec. 8. Minnesota Statutes 1982, section 290.136, subdivision 1, is amended to read:

Subdivision 1. [TRANSFER TO CORPORATION CONTROLLED BY TRANSFEROR.] The provisions of sections 351 to 368 of the Internal Revenue Code of 1954, as amended through December **31, 1981** *1, 1982* shall apply to corporate organizations and reorganizations. However, in section 362, the phrase "acquired in a taxable year beginning after December 31, 1956" shall be substituted for "acquired on or after June 22, 1954" when determining the property to which this section applies.

Sec. 9. [EFFECTIVE DATE.]

Section 1 is effective for taxable years beginning after December 31, 1982, except the provisions relating to original issue discount are effective at the same time as the provision became effective for federal tax purposes. Sections

2 and 4 to 8 are effective at the same time in 1982 as the provisions become effective for federal income tax purposes. Section 3 is effective for taxable years beginning after December 31, 1982 with respect to construction that commences after that date.